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## EVALUATOR MANUAL TRANSMITTAL SHEET

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<b><u>Distribution:</u></b>  <input type="checkbox"/> All Child Care Evaluator Manual Holders <input type="checkbox"/> All Residential Care Evaluator Manual Holders <input checked="" type="checkbox"/> All Evaluator Manual Holders	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;"><b><u>Transmittal No.</u></b> <b>11 RCFE -01</b></td> </tr> <tr> <td style="padding: 5px;"><b><u>Date Issued</u></b> August 2011</td> </tr> </table>	<b><u>Transmittal No.</u></b> <b>11 RCFE -01</b>	<b><u>Date Issued</u></b> August 2011
<b><u>Transmittal No.</u></b> <b>11 RCFE -01</b>			
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**Subject:**

Evaluator Manual: Eviction Procedures – Section 87224

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**Reason for Change:**

Add Section 87224 - Eviction procedures in Residential Care Facilities for the Elderly.

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**Filing Instructions:**

REMOVE – pages i, iii, 1 and 47 through 135

INSERT –pages i, iii, 1 and 47 through 151

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**Approved:**

***ORIGINAL DOCUMENT SIGNED BY***  
***Thomas Stahl, Chief***

***August 23, 2011***

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**THOMAS STAHL Chief**  
 Policy Development Bureau  
 Community Care Licensing Division

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Date

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**ARTICLE 1. DEFINITIONS AND FORMS**

**87100      GENERAL**

**87100**

**POLICY**

Existing general requirements for all community care facility categories do not apply to residential care facilities for the elderly. Chapter 8 is a complete set of regulations that includes both general and basic requirements for residential care facilities for the elderly.

**87101      DEFINITIONS**

**87101**

(a)(6) ■ Ambulatory Person      **PROCEDURE**

Refer to Regulation Interpretations Section 87204.

(b)(1) ■ Basic Rate      **POLICY**

Refer to Regulation Interpretations Section 87507(c) for clarification on charging for basic services for both private pay and Supplementary Security Income/State Supplementary Payment residents.

(b)(2) – Basic Services      **POLICY**

Refer to Regulation Interpretations and Procedures Section 87507(c) for clarification on charging for basic services for both private pay and Supplementary Security Income/State Supplementary Payment residents.

(e)(6) ■ Exception      **POLICY**

This term is used in Regulation Section 87209, Program Flexibility, which allows facilities to use alternative methods to meet the intent of a regulation with approval from the licensing agency. Also see Regulation Section 87101(w)(1), Waiver.

The term should not be confused with “exemption,” which applies only to criminal record clearances. See Regulation Section 87356, Criminal Record Exemption.

**PROCEDURE**

Refer to Regulation Sections 87209 and 87101(w)(1) and Reference Material Section 2-5000 for exception and waiver information.

(g)(1) – Guardian      **POLICY**

A guardian is exempt from licensure.

(i)(1) ■ Immediate Need      **PROCEDURE**

Refer to Regulation Section 87162, Provisional License.

**87219      PLANNED ACTIVITIES (Continued)**

**87219**

**PROCEDURE**

Review the Personnel Report (LIC 500) and the Facilities Staff Work Schedule (LIC 507) to determine that volunteers are being supervised and are not being used in lieu of designated staff.

(h)(2)

**POLICY**

The licensee’s activity plan is to include the location(s) of the outdoor activity space to be used by residents. The outdoor activity space may include activity centers, public parks and similar areas.

To assure the comfort of residents, shade may be provided by trees, awnings, tables with umbrellas, etc.

**87221      RESIDENT COUNCILS**

**87221**

**PROCEDURE**

Determine that facilities permit resident councils by interviewing residents and/or staff to see if residents have indicated an interest in forming a council. If it is determined that resident councils are not permitted, cite the licensee on the Facility Evaluation Report (LIC 809).

**87224      EVICTION PROCEDURES**

**87224**

(a)

**POLICY**

Thirty (30) day evictions do not need prior approval by the licensing agency. A resident may only be evicted for the reasons cited in California Code of Regulations, title 22, section 87224(a).

Admission agreements must be current at all times and approved by the licensing agency. California Code of Regulations, title 22, section 87507(c)(8), requires that admission agreements specify those actions, circumstances, or conditions that may result in the resident’s eviction from the facility. Except for general facility policies specified in California Code of Regulations, title 22, section 87224(a)(3), the eviction provisions shall not be modified.

Health and Safety Code section 1569.683 requires licensees to also include the following information in an eviction notice for residential care facilities for the elderly:

- The reasons relied upon for the eviction, with specific facts to permit determination of the date, place, witness, and circumstances concerning those reasons.

**87224      EVICTION PROCEDURES (Continued)**

**87224**

- The effective date of the eviction.
- Information about resources available to assist the resident in identifying alternative housing and care options, including public and private referral services and case management organizations.
- Information about the resident’s right to file a complaint with the California Department of Social Services regarding the eviction, with the name, address, and telephone number of the nearest community care licensing office and the State Ombudsman.
- The following statement (written word-for-word): “In order to evict a resident who remains in the facility after the effective date of the eviction, the residential care facility for the elderly must file an unlawful detainer action in superior court and receive a written judgment signed by a judge. If the facility pursues the unlawful detainer action, you must be served with a summons and complaint. You have the right to contest the eviction in writing and through a hearing.”

Note: The process for an unlawful detainer action will not apply to health condition relocation orders, or transfer of a resident upon forfeiture of a license or change in use of the facility.

The licensee, in addition to either serving a thirty (30) day eviction notice, or seeking approval from the California Department of Social Services and serving a three (3) day eviction notice on the resident, shall notify, or mail a copy of the eviction notice to the resident’s responsible person. If the resident is under a conservatorship, service shall also be made on the conservator.

**PROCEDURE**

See the Evaluator Manual’s Regulation Interpretations and Procedures section 87224(e) and Reference Material section 3-2200, Planning the Investigation, pertaining to investigating and prioritizing complaints about an unlawful eviction.

California Code of Regulations, title 22, section 87208(a), specifies that the plan of operation must contain a statement of admission policies and procedures regarding acceptance of persons for services.

The Licensing Program Analyst must review all **new facility applications** to ensure compliance with the eviction notice requirements specified in Health and Safety Code section 1569.683. The application requires a plan of operation, which includes the admission agreement. Health and Safety Code section 1569.885(d) specifies that a copy of any applicable resident’s rights specified by law or regulation shall be an attachment to all admission agreements. This includes the rights concerning evictions found in Health and Safety Code section 1569.683.

In addition, Health and Safety Code section 1569.886(c) specifies that the admission agreement shall include an explanation of the resident's right to notice prior to an eviction and the process by which the resident may appeal the decision. (See the Evaluator Manual's Regulation Interpretations and Procedures, following section 87224(i), for a sample checklist on eviction notice requirements for residential care facilities for the elderly.)

**During a facility file review, upon receipt of a licensee-issued resident's eviction notice, or prior to a facility visit (inspection or complaint related to evictions or admission agreements),** the Licensing Program Analyst must review the facility file to see if the licensee has submitted an updated admission agreement that meets the requirements in Health and Safety Code sections 1569.884, 1569.885, and 1569.886. Eviction notices must meet the requirements in Health and Safety Code section 1569.683. (See the Evaluator Manual's Regulation Interpretations and Procedures section 87224(e) for information pertaining to an eviction notice that is not compliant with statute and is determined to be an unlawful eviction.)

Prior to the facility visit, and as part of the facility file review, the Licensing Program Analyst must review the admission agreement. The admission agreement, which is part of the plan of operation, must include conditions under which the agreement may be terminated and list the justifications for eviction permissible under state law or regulation, exactly as they are worded in the applicable law or regulation. The admission agreement shall include an explanation of the resident's right to notice prior to an eviction, the process by which the resident may appeal the decision (including the unlawful detainer action process) and a description of the relocation assistance offered by the facility. In addition, the admission agreement shall state the responsibilities of the licensee and the rights of the resident when a licensee serves an eviction notice to the resident, to meet the requirements in Health and Safety Code section 1569.683. (See the Evaluator Manual's Regulation Interpretations and Procedures section 87224(c) on serving residents and/or the responsible person or conservator an eviction notice.)

- To comply with Health and Safety Code section 1569.683(a)(3), the eviction notice must include the name, address, and telephone number of the office of community care licensing that the licensee works with (or the applicable regional office) and the Office of the State Long-Term Care Ombudsman. It is a best practice to notify both the local office of the Long-Term Care Ombudsman and the Office of the State Long-Term Care Ombudsman at the same time. This may prevent delays in routing the actual eviction notice from the State office to the local office, which provides direct service to the resident.

**Note:** The licensee shall offer the resident an attachment to the admissions agreement that clarifies the resident's new eviction procedures rights. If a current resident refuses to sign an updated admission agreement, which must include information required by statute to be in the eviction notice, this will **not** be a sufficient reason to give this resident a thirty (30) day eviction notice. (See California Code of Regulations, title 22, section 87224(a) for the reasons specified for an eviction.) As a best practice, if the resident refuses to sign an updated admission agreement, the licensee should have documentation on file that the resident was notified on a specified date, but refused to sign.

If a resident was admitted into a facility prior to January 1, 2010, the licensee of that facility must still comply with Health and Safety Code section 1569.683 pertaining to an eviction notice, even if the resident did not sign an updated admission agreement.

In addition to reviewing the licensee-issued resident's eviction notice, the Licensing Program Analyst must ensure compliance with statutory and regulatory requirements related to the eviction process, including but not limited to the following:

- Documentation of licensee compliance with the reappraisal process as outlined in California Code of Regulations, title 22, section 87463, Reappraisals;
- Documentation supporting the licensee's specific reason(s) for evicting the resident, (See the Evaluator Manual's Regulation Interpretations and Procedures section 87224(d)); and
- Documentation indicating the resident has a need not previously identified, if given as a reason for the eviction.

A licensee cannot evict a resident who elects to remain in the facility after the effective date of the eviction unless the licensee files an unlawful detainer action in superior court and receives a written judgment signed by a judge. If a licensee pursues an unlawful detainer action, the resident must be served with a summons and complaint by the licensee.

The eviction notice must include resources available to assist a resident in identifying alternative housing and care options, including public and private referral services and case management organizations.

- Case management organizations ensure that services are met to allow individuals to stay in their own home and they can help coordinate an individual's care and services needs. They can be privately or publicly funded.
- For more information on these organizations, licensees may contact vendors and provider associations to assist with developing a resource list, which the licensee should maintain with current contact information.
- At a minimum, the resources list provided to residents must identify both public and private referral services, an case management organizations. There must be resources available to assist in identifying alternative housing and care options. The list must contain contact information with the community care licensing's applicable regional office and Office of the State Long-Term Care Ombudsman. It is a best practice to also include contact information for the local office of the Long-Term Care Ombudsman. It is a best practice for a licensee to work with other licensees, their assigned Licensing Program Analyst, State and local Ombudsman, city and county resources, clergy, referral agencies, case management agencies, multipurpose senior services programs, family members and social workers to comply with the requirement to include resources in the eviction notice.



The list may also refer the resident to the Community Care Licensing Division facility search feature at:

<http://cclld.ca.gov/PG3581.htm>

The licensing Program Analyst must inform the licensee that he/she must continue to provide care and supervision to, and meet the needs of, a resident for as long as that resident resides in the facility. The resident has the right to contest the eviction in superior court, in writing and through a hearing.

The resident has a right to file a complaint with the California Department of Social Services alleging a wrongful eviction. California Code of Regulations, title 22, section 87224(3) states that “Upon request of a resident, or his/her designated representative, the California Department of Social Services shall, pursuant to the provisions of Health and Safety Code section 1569.35 (relating to complaints), investigate the reasons given for the eviction.” The Licensing Program Analyst determines if the eviction is in compliance with California Code of Regulations, title 22, section 87224 and if the eviction notice is in compliance with Health and Safety Code section 1569.683. If in compliance, the eviction can proceed and, if the resident remains in the facility, the licensee may continue with the unlawful detainer action. (See the Evaluator Manual’s Regulation Interpretations and Procedures section 87224(e) for procedures to follow if an eviction notice is determined to be unlawful.)

If it is determined that there has been a violation of licensing laws or regulations regarding evictions, the licensee must be cited for the failure to comply with California Code of Regulations, title 22, section 87224, Eviction Procedures, and/or Health and Safety Code, section 1569.683, pertaining to the information required to be in the eviction notice. If the eviction notice is not in compliance with Health and Safety Code section 1569.683, then the plan of correction should be for the licensee to dismiss the original eviction notice and re-issue an eviction notice that is compliant with Health and Safety Code section 1569.683. Information about serving an eviction notice can be found in the Evaluator Manual’s Regulation Interpretations and Procedures, section 87224(c), Procedures.

If a Licensing Program Analyst is required to appear in court as a result of a resident contesting the eviction and going through the hearing process, a Licensing Program Manager and a Department legal consultant must be consulted prior to the proceeding.

**(a)(1) POLICY**

The licensee may upon thirty (30) days written notice to the resident, evict the resident for nonpayment of the rate for basic service within ten days of the due date. “Basic services” are defined and enumerated in Health and Safety Code section 1569.312 and California Code of Regulations, title 22, sections 87101(b)(2) and 87464(f). The admission agreement must clearly indicate what the charges are and the services provided for the charges.

California Code of Regulations, title 22, section 87464(3), provides that “if the resident is receiving Supplemental Security Income/State Supplementary Payment, then the basic services shall be provided and/or made available at the basic rate at no additional charge to the resident.” “Basic rate” is defined in California Code of Regulations, title 22, section 87101(b)(1), as “the Supplemental Security Income/State Supplementary Payment established rate, which does not include that amount allocated for the recipient’s personal and incidental needs.” The “established rate” means the rate that is established pursuant to Welfare and Institutions Code section 12200.

If a resident is a Supplemental Security Income/State Supplementary Payment recipient, then the basic services shall be provided and/or made available at the basic rate at no additional charge to the resident.

**PROCEDURE**

In those cases in which a resident is unable to pay the rate for basic services, the licensee is responsible for meeting the resident’s needs until the resident leaves the facility. (See the Evaluator Manual’s Regulation Interpretations and Procedures section 87224(a) for information about an unlawful detainer actions.)

If a resident becomes a recipient of Supplemental Security Income/State Supplementary Payment benefits, this represents a resident’s change of income status. Therefore, under these specific circumstances, once a resident is admitted into a residential care facility for the elderly, the facility cannot evict the resident for a change in the resident’s income status. California Code of Regulations, title 22, sections 87464(e) and 87101(b)(1), provide that residents who are recipients of Supplemental Security Income/State Supplementary Payment benefits shall have basic services provided and made available at the Supplemental Security Income/State Supplementary Payment established rate. Thus, when a resident in a residential care facility for the elderly becomes a recipient of Supplemental Security Income/State Supplementary Payment benefits, the facility must continue to provide basic services to the resident at the Supplemental Security Income/State Supplementary Payment basic rate.

**(a)(2)      POLICY**

The licensee may upon thirty (30) days written notice to the resident, evict the resident for failure of the resident to comply with state or local law after receiving written notice of the alleged violation. The agency that has authority and jurisdiction over the applicable law or regulation determines if a violation has occurred. The licensee shall receive written notice of the alleged violation from the appropriate citing or law enforcement agency, which shall be used as evidence for the eviction. This alleged violation must be directly related to a living situation that pertains to a resident living in a residential care facility for the elderly. For example, if a person has a California Department of Motor Vehicles violation, that would not impact a living situation as long as that resident will not be driving others at the facility.

**(a)(3) POLICY**

The licensee may upon thirty (30) days written notice to the resident, evict the resident for failure to comply with the general policies of the facility, which must be in writing and are for the purpose of making it possible for residents to live together. Facility “house rules” are an example of general facility policies. California Code of Regulations, title 22, section 87507(c)(7), requires that admission agreements shall specify general facility policies. General facility policies shall not violate a resident’s personal rights as specified in California Code of Regulations, title 22, section 87468, and must apply to everyone equally.

For a licensee to apply this section as grounds for eviction the general policy must have been part of the admission agreement (or attachment to it) as agreed to and signed and dated by the resident or the resident’s responsible person or conservator, and it must have been approved by the licensing office.

**PROCEDURE**

Any significant changes to a facility’s plan of operation that would affect the services to residents, including general facility policies, must be submitted to the licensing agency for review and approval prior to implementation, as specified in California Code of Regulations, title 22, section 87208(a).

**(a)(4) POLICY**

The licensee may upon thirty (30) days written notice to the resident, evict the resident if, after admission, it is determined that the resident has a need not previously identified and a reappraisal has been conducted pursuant to California Code of Regulations, title 22, section 87463, and the licensee and the person who performs the reappraisal determine that the facility is not appropriate for the resident. Sometimes a resident’s needs are not apparent or disclosed upon admission, and sometimes the resident’s needs change. The resident may develop a prohibited health condition (California Code of Regulations, title 22, section 87615) or the licensee may not be able to care for a restricted health condition (California Code of Regulations, title 22, section 87612). Prior to accepting or retaining a resident with an allowable health condition, the licensee must meet the requirements specified in California Code of Regulations, title 22, section 87611. Prior to admitting a resident with a restricted health condition, the licensee must meet the requirements specified in California Code of Regulations, title 22, section 87612. (See the Evaluator Manual’s Regulation Interpretations and Procedures section 87224(i) pertaining to a health condition relocation order).

Prior to a licensee issuing an eviction notice, the licensee must comply with the following sections pertaining to reappraisals:

- California Code of Regulations, title 22, section 87463(b), requires that the licensee bring any significant changes in the resident's physical, medical, mental and social condition to the attention of the resident's physician and his/her family or responsible person.
- California Code of Regulations, title 22, section 87463(c), requires the licensee to arrange a meeting with the resident, the resident's representative, if any, appropriate facility staff, and a representative of the resident's home health agency, if any, when there is a significant change in the resident's condition.

**Note:** If a resident with an existing health condition is admitted to a residential care facility for the elderly, and the resident exhibits behavior that is related to that health condition but the licensee can no longer meet the resident's needs, the licensee must immediately bring such changes to the attention of the resident's physician and his/her family or responsible person and consider using the applicable questions under the "Procedure" in (b). For example, if a licensee admitted a resident with a diagnosis of dementia, it is not uncommon for an individual to exhibit dramatic changes in behavior. The resident could begin to wander, and the resident may be in a small facility with no memory unit or egress devices. In signing the admission agreement, the licensee is agreeing to care for the condition, which includes behaviors associated with the condition. It is the licensee's responsibility to understand the possible behaviors that are associated with any given diagnosis prior to accepting a resident. The admission agreement must specify those actions, circumstances, or conditions specified in California Code of Regulations, title 22, section 87224 on Eviction Procedures, which may result in the resident's eviction from the facility and the basic and optional services that are available. See the second paragraph under "Procedure" for (a)(4), under "Resident Relocated to Higher Level of Care". The example about dementia above would not be considered a reason for a three (3) day eviction.

*Prohibited Health Conditions:*

If an eviction action is directly related to a resident's newly identified prohibited health condition, the licensee may issue a thirty (30) day eviction notice after completing the reappraisal requirements pursuant to California Code of Regulations, title 22, section 87463.

Health and Safety Code section 1569.72(a) specifies that no resident shall be admitted or retained in a residential care facility for the elderly if the resident requires 24-hour, skilled nursing or intermediate care and/or the resident is bedridden, other than for a temporary illness or for recovery from surgery that does not persist for more than 14 days.

Health and Safety Code section 1569.47(b) specifies a placement agency shall not place individuals in licensed residential care facilities for the elderly when the individual, because of his or her health condition, cannot be cared for within the limits of the license or requires inpatient care in a health facility. An eviction notice may be served to a resident in the hospital or other health care facility.

The California Code of Regulations, title 22, section 87209, Program Flexibility, states in part, that the licensee may submit a written exception request if the licensee is willing and able to care for a resident and agrees that the resident has a prohibited and/or restrictive health condition, but believes that the intent of the law can be met through alternative means. (See California Code of Regulations, title 22, section 87616(b), for the requirements on written requests for exceptions specific to prohibited health conditions.)

**PROCEDURE**

Licensees may issue a resident a thirty (30) day eviction notice if they determine, after conducting a reappraisal, that they are unable to meet the needs of a resident with a prohibited health condition. If a licensee evicts a resident, he/she must comply with all requirements related to the eviction process. If a licensee determines he/she is able to meet a resident's needs, the licensee must request an exception, which must be granted in order to retain a resident who is already in the facility with a prohibited health condition or prior to accepting a resident with a prohibited health condition.

*Resident Relocated to Higher Level of Care:*

If a change in condition occurs after a resident has been admitted to a residential care facility for the elderly, and the licensee determines based on a reappraisal that the resident's needs cannot be met by the facility, relocation to a higher level of care may be appropriate. At this time, the licensee may issue a thirty (30) day eviction notice. (See the Evaluator Manual's Regulation Interpretations and Procedures section 87724(c) pertaining to serving an eviction notice.)

If within the thirty (30) day eviction period the resident recovers from the presenting change in condition and no longer needs the higher level of care, the licensee must rescind the eviction notice and allow the resident to return to the facility. If the thirty (30) day eviction period ends and a resident is then evicted because of a prohibited health condition, the licensee could later decide to take the resident back if Licensing grants an exception. It may be necessary for the resident to sign and date a new admission agreement, or an attachment to it, if the admission agreement has since changed or if there is an increase in the rate for care.

**(b)      POLICY**

The licensee may, upon obtaining prior written approval from the licensing agency, evict the resident upon three (3) days written notice to quit.

Granting an approval for a three (3) day eviction is based upon a finding of good cause. Good cause exists if the resident is engaging in behavior that is a threat to the mental and/or physical health or safety of him/her or to the mental and/or physical health or safety of others in the facility. The issuance of the three (3) day notice may also be appropriate for residents involved in criminal behavior that threatens the health and safety of residents or facility staff but is not associated with a mental disorder. This process should not interfere with the licensee's responsibility to rely upon other resources or means of intervention to ensure the health and safety of all residents is protected. The licensee must also meet the requirements in the Evaluator Manual's Regulation Interpretations and Procedures section 87224(c) pertaining to serving an eviction notice (i.e., notice to quit).

If a resident is removed from a facility based on reasons given in Regulation Interpretations and Procedures section 87224(b) above, and if that resident is placed on an involuntary psychiatric hold (Welfare and Institutions Code section 5150), this alone is not sufficient evidence for a three (3) day eviction notice.

The Licensing Program Analyst's decision whether to give written approval for a (3) day eviction must be fact based, and the procedures below are provided to guide the Licensing Program Analyst in this decision.

If a resident returns to the facility after the involuntary psychiatric hold, and if there is a need to remove the resident based on good cause, then the licensee may follow California Code of Regulations, title 22, section 87224(b) and serve the resident with a three (3) day eviction notice, and the eviction process will begin. If the resident refuses to move out of the facility within the three (3) day eviction period, then the licensee must file an unlawful detainer action in superior court and receive a written judgment signed by a judge. An unlawful detainer action must also be filed if a resident is not at the facility and is on an involuntary psychiatric hold. Health and Safety Code section 1569.683(a)(4) requires the following statement to be on the eviction notice. "In order to evict a resident who remains in the facility after the effective date of the eviction, the residential care facility for the elderly must file an unlawful detainer action in superior court and receive a written judgment signed by a judge. If the facility pursues the unlawful detainer action, you (a resident and/or responsible person) must be served with a summons and complaint. You (a resident has) have the right to contest the eviction in writing and through a hearing."

### **PROCEDURE**

The burden of proof falls on the licensee to provide documentation to support a request for a three (3) day eviction. If the licensing agency determines that "good cause" to evict does not exist and there is insufficient evidence to support a three (3) day eviction, or the notice fails to comply with the applicable statutes and regulations, the request for a three (3) day eviction will **not** be approved.

To evaluate a request for a three (3) day eviction notice, Licensing Program Analyst should interview the resident, complainant, and witnesses (if any) and may consider using the following questions on a case-by-case basis as a means of determining if good cause exists:

- Is there an immediate threat to resident/residents/staff?
- What was the event – date/time/witnesses?
- Were there any precipitating factors/triggers/events observed or known?
- What did staff do to intervene?
- Was the resident willing and able to be redirected?
- Did any resident(s) sustain an injury, and if so, what medical intervention was needed?
- What is the primary and secondary diagnosis of the resident?
- Is there any history of the behavior that is currently being exhibited (this includes information on the pre-appraisal, subsequent appraisals, etc.)
- When was the last time this resident was seen by a physician?
- What medications is the resident currently taking and has there been any recent change in medications? (new medications should be evaluated by a physician prior to the person receiving an eviction notice)
- What was the care plan for this resident prior to the incident?
- How did the incident deviate from the care plan?
- Has the resident's physician been contacted about the incident and the change of resident's behavior, and will the physician be evaluating the resident?
- Has the resident's family (responsible person or conservator) been contacted about the incident and the change of resident's behavior, and is a meeting planned?
- What can the facility do to meet the immediate needs of this resident?

**Documentation that the Licensing Program Analyst Must Review:**

- Physician report (old and new for comparison)
- Medication record
- Pre-admission appraisal
- Most current appraisal
- Incident report(s)
- Any pertinent resident record notes
- Documentation of an arranged meeting with the licensee and the resident, the resident's representative, if any, and a representative of the resident's home health agency, if any
- Documentation supporting the licensee's specific reason(s) for evicting the resident [See the Evaluator Manual's Regulation Interpretations and Procedures section 87224(d).]
- Documentation indicating the resident has a need not previously identified
- Reappraisal documentation indicating that the licensee and person who performed the reappraisal determined that the facility does not meet, or cannot accommodate, the resident's current needs; therefore, it is not the appropriate facility for the resident

If a resident receives a three (3) day eviction notice based on good cause, and if that resident remains in the facility after the effective date, then Health and Safety Code section 1569.683(a) will apply and the licensee must file an unlawful detainer action in superior court to pursue eviction. During this interim period, neither the resident nor the licensee is precluded from invoking any other remedy available under law.

If a Licensing Program Analyst is required to appear in court, a Licensing Program Manager and a Department legal consultant must be consulted prior to the proceeding.

The licensee may phone 9-1-1 if a resident's behavior poses a threat to the resident, other residents, facility staff or any other persons. The licensee must document all activities related to an incident, including the activities of law enforcement, if applicable. If a resident is removed from a facility and placed on an involuntary psychiatric hold (Welfare and Institutions Code section 5150), this alone is not sufficient evidence for a three (3) day eviction.

**(c)      PROCEDURE**

Section 1162 of the Code of Civil Procedure sets forth the methods by which the licensee can serve the eviction notice (notice to quit) on the resident. The best practice is for the licensee, the licensee's agent, or anyone over age 18 to personally deliver the eviction notice to the resident. If the resident refuses to take possession of the notice, the licensee can just leave it with the resident and still have proper service of the notice. The second method is to use "substituted service" where the resident cannot be served personally (i.e., is away from the facility). In this method, the person serving the notice must leave the notice with a person of suitable age and discretion at the resident's home (residential care facility for the elderly), and must also mail a copy of the notice to the resident at the resident's home address (resident's address in the residential care facility for the elderly where he/she receives mail). Note that mailing any eviction notice can be done by sending it in the normal first class mail with prepaid postage attached. As a best practice and a way of properly documenting the service, it is in the interest of the licensee to mail the notice by certified or registered mail with return receipt requested. The third method is where the licensee cannot serve the notice on the resident personally or by substituted service. In this situation, the notice can be served by taping or tacking a copy to the resident's room in a conspicuous place and by also mailing a copy to the resident at the resident's home address (resident's address in the residential care facility for the elderly where he/she receives mail). **Note:** If an unlawful eviction notice is issued, it would be up to the licensing program analyst to determine whether a correct eviction notice, fully compliant with the criteria of Health and Safety Code section 1569.683, was given to the resident or legal representative.

Health and Safety Code section 1569.683 requires the licensee to document the effective date of the eviction. Note that the determination of the effective date of the eviction begins by counting the days on the first day after the day the notice was served or mailed.



Thus, where the eviction notice was personally delivered to the resident, the three (3) day notice period (assuming approval has been obtained from the Department) or the thirty (30) day period begins when both the substituted service method or the post and mail method or when the posting and the mailing steps are completed. Note that the date the notice is mailed is used in making the calculation, not the date the resident actually receives the mailing. Also note that if the third day or thirtieth day following the completed service falls on a Saturday, Sunday, or holiday, the three-day period or thirty-day period will not expire until the following Monday or non-holiday.

Health and Safety Code section 1569.683 also requires the licensee, in addition to serving the resident, to notify or mail a copy of the notice to quit to the resident's responsible person. The resident's responsible person could be a person the resident has designated as acceptable to act on behalf of the resident but could also include an authorized agent of a signed power of attorney for the resident. If a resident is a conservatee of court appointed conservatorship, the responsible person in this situation would be the conservator. Although the statute requires either notifying or mailing a copy of the notice to the responsible person or the conservator, it is a best practice for the licensee to do both steps. Thus, if he or she chooses to mail the copy of the notice, to also contact the responsible person or conservator on the same day that personal service of the notice is made on the resident. Conversely, if the licensee chooses to notify the responsible person or conservator, then he or she should also mail a copy of the notice on the same day that notification is made. The licensee is responsible for documenting when the responsible person or conservator was contacted and the method used for contacting him or her.

**(d)      PROCEDURE**

The licensee must document in detail all the reasons for the eviction notice. Eviction notices must state the reasons for the eviction and the specific facts to determine the date, place, witness and circumstances concerning those reasons. Licensees will be asked to produce sufficient evidence to support the eviction and should document what was seen or heard, who was present when the events happened, where and how the events occurred, and who made the statements to whom. A complete list of witnesses is important in case they have to be interviewed later on.

Licensees must be cited if the eviction notice (i.e., notice to quit) does not contain the required language in Health and Safety Code section 1569.683.

**(e)      PROCEDURE**

If the licensing agency receives a complaint related to an unlawful eviction, complaint investigation procedures are to be followed.

All activities related to investigation and resolution of complaints shall also be followed. (See the Evaluator Manual's Reference Material, section 3-2200, Planning the Investigation.)

If an eviction notice (i.e., notice to quit) is not compliant with statute, and is determined to be an unlawful eviction, the Licensing Program Analyst must do the following:

- Establish contact with the licensee immediately and follow up the initial contact by providing the licensee a checklist of required items for the eviction notice, as specified in Health and Safety Code section 1569.683, so that if the licensee takes corrective measures, the licensee can issue a new corrected eviction notice. (See Regulation Interpretations and Procedures, following section 87224(i), for a sample checklist on eviction notice requirements for residential care facilities for the elderly.)
- Advise the licensee that he/she must immediately notify the resident and/or the resident's responsible person or conservator in writing that the timeframe for the thirty (30) day, or three (3) day eviction process, will not begin until the resident is properly served with a corrected eviction notice that complies with the requirements of Health and Safety Code section 1569.683. See the general information pertaining to evictions in the Evaluator Manual's Regulation Interpretations and Procedures section 87224(a). Also see the Evaluator Manual's Interpretations and Procedures section 87224(c) pertaining to serving a resident and/or the responsible person or conservator.
- Initiate an investigation within ten days or sooner.
- Cite the licensee for the failure to comply with California Code of Regulations, title 22, section 87224, Eviction Procedures, and/or Health and Safety Code, section 1569.683, pertaining to the information required to be in the eviction notice.
- Document all communications pertaining to an unlawful eviction on the form, LIC 812, Detail Supportive Information, and place this form in the confidential section of the facility file.
- Advise licensees or designated substitute staff, during an evaluation or complaint visit to an RCFE, that Health and Safety Code section 1569.155 specifies that all licensees shall subscribe to an appropriate regulation subscription service and are responsible for keeping current on changes in regulatory requirements.
  - For legislative information related to Health and Safety Code section 1569.683 (Senate Bill 781) statutes of 2010, see Community Care Licensing Division Website, Chaptered Legislation at <http://www.cclid.ca.gov/PG830.htm>

The Regulation Interpretations and Procedures section 87224, on eviction procedures, can be obtained at the Community Care Licensing Division Website at: <http://www.cclid.ca.gov/PG395.htm>

- Licensing Program Analysts may offer consultation about the best practices specified in Regulation Interpretations and Procedures section 87224.

**(f) PROCEDURE**

Licensees must submit a written report of any eviction to the licensing agency within five (5) days of servicing the resident. As a best practice, licensees are encouraged to indicate on the envelope that an eviction notice (i.e., notice to quit) is enclosed in order to alert the licensing agency that the mail is time sensitive. Licensees are also encouraged to submit the actual eviction notice to the licensing agency at the same time the resident, responsible person and/or conservator are notified. (See the Evaluator Manual’s Regulation Interpretations and Procedures section 87224(a), under “Procedures”, where it specifies what a Licensing Program Analyst must do if the eviction notice is not compliant with Health and Safety Code section 1569.683.)

The licensing agency will promptly review all licensee submitted eviction notices to evaluate compliance with eviction statutes and regulations. This will include a review of the reasons for an eviction to determine if the eviction is lawful and meets the requirements set forth in California Code of Regulations, title 22, section 87224. In addition, the eviction notice must meet the requirements in Health and Safety Code section 1569.683 that pertains to the information required to be included in an eviction notice. It may be necessary to contact the resident or facility to get more information or to request additional documentation. If it is determined that a licensee engaged in an unlawful eviction process, appropriate citations must be issued.

**(g) POLICY**

A “continuing care contract” is defined in California Code of Regulations, title 22, section 87101, under definitions.

**(h) POLICY**

Under current law, the expiration of the thirty (30) day or three (3) day eviction period does not authorize a licensee to take any action to physically remove a resident and/or his/her belongings from a facility or to deny a resident access to a facility. The licensee must provide care and supervision to that resident and continue to meet his/her needs for as long as that resident resides in the facility. A licensee cannot evict a resident who remains in the facility after the effective date of the eviction unless the licensee files an unlawful detainer action in superior court and receives a written judgment signed by a judge. If a licensee pursues an unlawful detainer action, the resident must be served with a summons and complaint.

This service of the summons and complaint is a different process from the service of the eviction notice (i.e., notice to quit) initially served on the resident. Instead, this is a legal process whereby someone other than the licensee actually serves the summons and complaint on the resident. Whether or not the service of summons and complaint was properly handled is a matter for the superior court judge and is not the responsibility of the Licensing Program Analyst. The resident has the right to contest the eviction in writing and through a hearing.

**SAMPLE CHECKLIST ON EVICTION NOTICE REQUIREMENTS FOR  
RESIDENTIAL CARE FACILITIES FOR THE ELDERLY**

The purpose of this facility checklist tool is to identify the actions that must be taken by a licensee of a residential care facility for the elderly (RCFE) to comply with Health and Safety Code section 1569.683 and the items that must be included in the actual eviction notice.

- See the Evaluator Manual's Regulation Interpretations and Procedures section 87224, which provides clarification on eviction procedures and the requirements for the eviction notice. This section of the Evaluator Manual replaces the Implementation Plan.

**RCFE Licensees Must:**

- Ensure that the eviction notice includes the items required by Health and Safety Code section 1569.683.
- Comply with other applicable regulations for an RCFE, including section 87224 on eviction procedures.
- Notify or mail a copy of the eviction notice to the resident's responsible person or conservator, in addition to either serving a resident with a thirty (30) day notice or, in the case of a three (3) day eviction, seeking approval from the California Department of Social Services and serving a three (3) day notice.
- Continue to provide care and supervision to, and meet the needs of, a resident for as long as that resident resides in the facility.
- Submit a written report of any eviction to the licensing agency within five (5) days of serving the resident. As a best practice, indicate on the envelope that an eviction notice is enclosed to alert the licensing agency that the mail is time sensitive.

**The Eviction Notice in RCFEs Must Include the Following:**

- The full name of the resident or resident(s) to be evicted.
- The address that the resident in the residential care facility for the elderly will be evicted from.
- The licensee’s signature and the date of the notice.
- The reasons relied upon for the eviction, with specific facts to permit determination of the date, place, witnesses, and circumstances concerning those reasons.
- The effective date of the eviction.
- Information about resources available to assist the resident in identifying alternative housing and care options, including public and private referral services and case management organizations.
- Information about the resident’s right to file a complaint with the Department regarding the eviction, with the name, address, and telephone number of the nearest office of Community Care Licensing and the State Ombudsman.
- The following statement (word-for-word) “In order to evict a resident who remains in the facility after the effective date of the eviction, the residential care facility for the elderly must file an unlawful detainer action in superior court and receive a written judgment signed by a judge. If the facility pursues the unlawful detainer action, you must be served with a summons and complaint. You have the right to contest the eviction in writing and through a hearing.”

**ARTICLE 5. PHYSICAL ENVIRONMENT AND ACCOMMODATIONS**

**(a) POLICY**

The presence of an environmental health and safety hazard in a residential care facility for the elderly is a violation of this section.

Suspected environmental hazards (e.g., asbestos) to residents or employees of residential care facilities for the elderly should be inspected by the agency having jurisdiction (e.g., the county environmental health and sanitation agency). The results of that inspection could be the basis for appropriate licensing decisions. This policy applies to other referrals to health/sanitation agencies for other issues (e.g., suspected water contamination, a questionable waste disposal system, etc.). Refer to Regulation and Regulation Interpretations Section 87303(a)(1).

**PROCEDURE**

1. If a hazard is suspected, request an inspection from the agency having jurisdiction. If possible, conduct a joint inspection with that agency.
2. If the results of the inspection verify the presence of a hazard that jeopardizes the health and safety of facility residents/employees, cite as a deficiency under this regulation and establish a plan of correction and due date.
3. Refer to Reference Material section 3-4200 for additional information.

(a)(1)

**POLICY**

Licensing agencies are to use county health department staff selectively to establish a facility's compliance with a licensing requirement. For example, county health department staff may be used to inspect the source of a facility's private water supply and to provide a bacteriological analysis of a sample of the water. Likewise, a county health department evaluation may be needed to assess whether a facility's waste disposal practices pose a threat to the health and safety of residents. However, requesting inspections of a facility by a county health department to ascertain compliance with the California Uniform Retail Food Facilities Law or any statute other than the Residential Care Facility for the Elderly Act is inappropriate because those statutes do not apply to residential care facilities for the elderly.

A county health department may be used as a consultant or resource to a licensing agency when an analyst cannot establish a facility's compliance with health-related provisions of the Residential Care Facility for the Elderly Act and/or licensing regulations. The licensing agency is responsible for evaluating input from the county health department in relation to licensing standards.

**PROCEDURE**

See Regulation and Regulation Interpretations section 87555, General Food Service Requirements.

(b)(2)

**POLICY**

This regulation does not necessarily require facilities to install air-conditioning units. For example, in areas of mild temperature, occasional hot spells could be dealt with using other means of ventilation or cooling. If all the residents of a facility want a warmer or cooler temperature than this regulation allows, the licensee may request a waiver.

87303

**MAINTENANCE AND OPERATION (Continued)**

87303

**PROCEDURE**

If a facility seems unusually hot or cold, or if a complaint regarding temperature is received, determine by reading the thermostat or thermometer that the indoor temperature of the facility is within the range specified in this regulation.

If a facility requests a waiver because all of the residents want a warmer or cooler temperature than this regulation allows, the licensee must be able to provide the licensing agency with signed statements to that effect from residents and/or responsible persons. Interview residents privately to ascertain what temperature is acceptable to them.

(e)(2)

**PROCEDURE**

Check the temperature of water by using a holding thermometer.

(g)(2)

**POLICY**

Coin-operated machines may be used by private residents who are capable of doing their own laundry and agree to do so in their admission agreement. Private residents who are not capable of doing their own laundry have the opportunity at the time of admission to decide if the facility can meet their needs and whether or not they want to reside in the facility. However, residents should not be charged twice. (For example, a resident cannot be charged the total basic rate, which includes a laundry service fee, and also be required to use his/her own money to operate coin-operated machines.) Thus, each admission agreement for private pay residents should clearly stipulate only one of the following:

1. That the total basic services charge includes basic laundry service (for those residents who either are not capable of doing their own laundry or do not want to do their own laundry); or
2. That the total basic services charge does not include laundry service and that the resident must use his/her own money to use coin-operated machines (for residents who are capable of doing their own laundry and want to do it).

No resident's laundry may go undone because the resident is not capable of doing his/her own laundry or does not want to do it. Residents who after admission become unable to do their own laundry, or decide they do not want to do it, are to be provided laundry service and have their admission agreements amended accordingly.

If the only washing machine or dryer available for use by residents is coin-operated, Supplementary Security Income/State Supplementary Payment recipients are to be provided with laundry supplies and coins or tokens as part of their basic services.

**87303**

**MAINTENANCE AND OPERATION (Continued)**

**87303**

**PROCEDURE**

Review resident files to ensure that residents are not charged twice for laundry service, and that personal and incidental funds are not used for laundry service.

(i)(1)(A)

**POLICY**

For the purposes of this regulation, the resident's "living unit" is the resident's bedroom.

(i)(2)

**POLICY**

Varying individual situations may not fully meet this requirement. The intent of the regulation is to assure a quick response to a resident who is signaling. If a facility cannot fully meet the signal system specifications, but can meet the intent of the regulation by using a safe and effective alternative, a waiver would be warranted. The licensing agency should evaluate such waivers on a case-by-case basis. Approvals depend on the specific system in a specific facility and the response plan used by that particular facility. For example, a facility may have two separate adjacent buildings: one building containing the **central** signal system and one bedroom (living unit); and the other building containing two bedrooms (living units). In this case the facility could be given a waiver not to install a signal system that identifies **each** bedroom because staff could quickly respond to a signal and identify which resident was signaling.

On the other hand, a staff person would not be capable of quickly responding to a signal if there were ten separate bedrooms, five on each side of a long hall, unless the signal system had the capability to identify the particular bedroom.

Requirements for fire/smoke detection systems are regulated by the State Fire Marshal (separate from the above requirement) through the required fire clearance.

**87305 ALTERATIONS TO EXISTING BUILDINGS OR NEW FACILITIES**

**87305**

(b)

**POLICY**

When a licensee decides to renovate, reconstruct or add new construction to a facility, the State Fire Marshal or local fire authority must approve the building plans. The licensee should submit to the Regional Office a floor plan with room dimensions and an indication of the intended use for each room. In addition, the analyst may provide consultation to a potential new licensee on the renovation, reconstruction or new construction of a building intended for use as a facility.

The licensee or potential licensee should be informed that alterations to existing structures or new construction must be approved by a state or local building inspector as mandated in the Building Code.



**87305 ALTERATIONS TO EXISTING BUILDINGS OR NEW FACILITIES      87305**

**POLICY (Continued)**

Under State Fire Marshal regulations, a copy of the approved plans and specifications must be kept at the job site during all phases of construction.

**PROCEDURE**

After the analyst's review of the final floor plan, the Regional Office must submit a Fire Safety Inspection Request (STD 850) to the State Fire Marshal or the local fire authority.

If the renovation, reconstruction or new construction impacts licensed capacity or ambulatory status, the licensee must complete a new Application for Facility License (LIC 200).

Upon receipt of the report from the licensee that the construction is nearing completion, request a fire clearance [Fire Safety Inspection Request (STD 850)]. Schedule a final site visit to: 1) ensure that the construction has been completed in accordance with the floor plans submitted; 2) complete an analysis of the accommodations; 3) confirm that the facility is in compliance for resident occupancy; and 4) ensure that the facility meets all licensing regulations.

If a suspected building hazard to health and safety is identified during a site visit, discuss the problem with the licensee and document on the Facility Evaluation Report (LIC 809) the plan-of-correction date for the licensee to arrange for a building inspection with an authorized building inspector.

**87307      PERSONAL ACCOMMODATIONS AND SERVICES      87307**

**(a)(2)(D)      POLICY**

Licensees, members of a licensee's family, staff, etc., cannot share bedrooms with residents.

**(a)(3)(B)      POLICY**

Two residents sharing a bedroom may share one nightstand.

**POLICY**

Provision of furniture is a basic service. The resident cannot be required to provide his/her own furniture, but may do so if desired. The licensee must provide furniture if the resident does not provide his/her own furniture. If the licensee does not provide furniture, he/she is in violation of Section 87307(a)(3). The licensee may charge the private pay resident for furniture or individual pieces of furniture if this item is agreed to in the Admission Agreement.

(a)(3)(D)

**POLICY**

Licensees must assure the provision of common personal hygiene items. At a minimum these items include soap, toilet paper, combs, toothpaste, toothbrushes and feminine napkins.

These items are to be furnished at the basic rate unless a resident wishes to use a specific brand that the facility does not normally purchase. Charges for special purchases must be indicated in the admission agreement, agreed upon by the resident or authorized representative, and provided at cost.

For any personal or incidental items ordered by a physician but that do not require a prescription (e.g., medicated soaps, shampoos or lotions), the licensee must contact the appropriate MediCal office or responsible person to determine if they will pay for or provide the items.

If a facility is experiencing a problem with waste and breakage, additional supervision must be provided rather than charging the resident when loss or breakage occurs.

**PROCEDURE**

Review the admission agreement to ensure that any additional charges have been agreed to beforehand.

As appropriate, interview residents to ensure that they actually prefer the specific brand for which they were charged and that they are capable of making that decision.

(a)(3)(E)

**POLICY**

Due to the requirement to provide a chest of drawers for each resident [Regulation Section 87307(a)(3)(B)], this drawer space requirement may already be met.

(a)(3)(F)

**POLICY**

Although basic laundry services are required, residents who are able to, and who want to, may do their own personal laundry. Ability will be determined by the preadmission appraisal or reappraisal. Also see Regulation and Regulation Interpretation Section 87303(g).

(c)

**POLICY**

Privacy can be assured by the use of dividers, screens, curtains, stall doors, etc.

(d)(2)      **PROCEDURE**

Also see Regulation and Regulation Interpretation sections 87303 and 87555.

(e)      **POLICY**

Pools that cannot be emptied after each use must have an operative pump and filtering system.

Pool inaccessibility does not relieve the licensee of his/her obligation to provide supervision. Both supervision of residents and pool inaccessibility are required.

**FENCES**

Fences used for this purpose must be 5 feet tall, constructed so as not to obstruct the pool from view, and be self-latching at the top of the gate. All fences must be in good repair and completely surround the pool.

In addition, it is recommended that the bottom and the sides of the fence comply with Division 1, Appendix Chapter 4 of the 1994 Uniform Building Code; that gates swing away from the pool and self-close; and that the self-latching device be located no more than 6 inches from the top of the gate.

Division 1, Appendix Chapter 4 of the 1994 Uniform Building Code provides in pertinent part:

1.      **Bottom**

The bottom of the fence should be no more than 2 inches from the ground (4 inches if the fence is on a hard surface such as a concrete deck or mounted on top of an above-ground pool structure).

2.      **Sides**

**Separation Fence:** No door or window of the facility should provide direct access to the pool. If a wall of the dwelling contains doors or windows that provide direct access to the pool, a separation fence should be provided.

**Indentations and Protrusions:** On the side away from the pool, protrusions and indentations are prohibited if they render the barrier easily climbable by a child under the age of six. In particular, horizontal bars or beams on the side away from the pool should be spaced at least 45 inches apart.

**POLICY (Continued)**

**Openings:** No opening should permit the passage of a 1 ¾ inch (44 mm) diameter sphere [a golf ball, which has a diameter of 42.67 mm, provides a good approximation]. However, for picket fences (fencing made up of vertical and horizontal members), if the tops of the horizontal beams are at least 45 inches apart, the pickets may be up to 4 inches apart.

**Thickness:** Wire used in chain link fences should be thick enough so that it cannot be easily broken, removed or stretched by residents. Chicken wire, for example, is unacceptable.

**MESH FENCES**

Mesh fences that meet regulatory standards for pool fencing may be used **provided the licensee agrees on the Facility Evaluation Report (LIC 809) that regardless of whether or not residents are present, the fence will remain permanently in place for the duration of the license.**

The intent of Regulation Section 87307(e) is to ensure that swimming pools and other bodies of water are inaccessible. If mesh fencing is used, it must meet the regulatory requirement of preventing access to a pool or other body of water.

Even though some mesh fencing is “removable,” it may be appropriate for use around a pool in a residential care facility for the elderly **as long as it remains permanently in place for the duration of the license, as indicated above.**

Mesh fencing must be inspected and approved by licensing staff as meeting regulatory requirements prior to use. Important considerations in evaluating mesh fencing for use in a residential care facility for the elderly are:

- The mesh fencing should be designed and installed so that residents, or children visiting residents, cannot remove any portion of the fence themselves.
- The mesh fencing should be able to withstand the impact of items such as wheelchairs and walkers.
- The mesh fencing should not readily bend upon impact.

In addition to the analyst’s own inspection, the manufacturer’s representative(s) and the manufacturer’s instructions should be able to provide information about the quality and durability of the mesh fencing.

**POLICY (Continued)**

**WHERE THE FENCE IS ON TOP OF THE POOL STRUCTURE**

Where an above-ground pool structure is used as the fence, or where the fence is mounted on top of the pool structure, the pool must be made inaccessible when not in use by removing or making the ladder inaccessible or by erecting a barricade to prevent access to decking. If a barricade is used, the barricade should meet the fencing specifications described above.

**POOL COVERS**

Pool covers must be strong enough to completely support the weight of an adult and must be placed on the pool and locked while the pool is not in use. Pool covers embossed or labeled “F 1346-91” by the American Society for Testing and Materials (ASTM) will support the weight of an adult. Pool domes are tent-like structures that fit over the pool for heating purposes; domes are not designed to keep out residents and are **not** acceptable substitutes for covers.

**PROCEDURE**

A waiver to the requirement for a fence or pool cover may be considered under the following circumstances:

- Apartment complexes in which the building encloses the pool area and is itself the pool barrier pose special problems. In this case, a waiver must require either of the following for each door of the apartment that gives direct access to the pool:

Installation of an alarm on the door of the licensee’s apartment. The alarm must meet the requirements of the 1997 edition of the Uniform Building Code Appendix Chapter 4, Division 1, Section 421.1(5)(2). Section 421.1(5)(2) provides that the alarm must be capable of being heard throughout the house during normal household activities. The alarm must also sound continuously for at least 10 seconds immediately after the door (and its screen, if present) is opened. A switch or touch pad that permits the alarm to be deactivated for a single opening of no more than 15 seconds must be installed at least 4 ½ feet from the floor. The alarm must automatically reset under all conditions.

**OR**

Installation of self-closing and self-latching devices with the release mechanism located a minimum of 54 inches above the floor.

Where windows of the apartment give direct access to the pool, a waiver must also require that the windows be secured without violating fire clearance requirements.

**87309      STORAGE SPACE**

**87309**

**POLICY**

- (a) It is not the intent of the regulation to deny residents, including those diagnosed as mildly cognitively impaired, the use of cleaning supplies and similar products. If the resident functions independently, and there is no evidence to substantiate that the resident cannot safely manage products that could be toxic, then the resident should not be denied the use of such products. The licensee must develop and maintain a current written plan to ensure that access to these items does not pose a hazard to other residents in care.

The Licensing Program Analyst may require the licensee to have a resident reassessed for his/her ability to safely use cleaning supplies and similar products if incident reports a review of facility notes, or resident observation indicates the need.

**87312      MOTOR VEHICLES USED IN TRANSPORTING RESIDENTS**

**87312**

**POLICY**

Licensees should not be required to have motor vehicles safety-checked periodically.

**PROCEDURE**

If any vehicle used to transport residents appears to be unsafe (e.g., has bald tires, a broken headlight, a shattered windshield, etc.), develop a plan with the licensee to (1) correct the obvious problem(s) and (2) submit to the licensing agency a safety check from a service station or garage certified to perform this service.

**ARTICLE 6. BACKGROUND CHECK**

**87356      CRIMINAL RECORD EXEMPTION**

**87356**

(a)(1-4) and (b)(1)

**POLICY**

With the exception of the licensee, spouse, or dependent adult living in the facility, individuals with non-exemptible, felony, or violent misdemeanor convictions must be immediately removed from a licensed facility. Individuals with non-exemptible convictions are not eligible for an exemption. Persons with felony or violent misdemeanor convictions may request an exemption, but must remain out of the facility pending an exemption decision. Individuals may also be excluded from a licensed facility if an exemption is denied or if a previously granted exemption is rescinded. The notification process and Confirmation of Removal form discussed below are applicable in these circumstances.

If the individual is a licensee, spouse, or dependent adult living in the facility, see Evaluator Manual Reference Material, Background Check Procedures Section 7-1820 to determine what action should be taken.

**POLICY (Continued)**

The Licensing Agency will contact the licensee by telephone and advise that the individual must be removed from the facility. If the cause for removal is a conviction that can be exempted, the individual and the licensee of the facility with which they are associated, are sent a letter informing them that an exemption must be obtained before the individual can return to the licensed facility. For all removals, the licensee is sent a Confirmation of Removal form by the Licensing Agency. The licensee must complete the Confirmation of Removal form and return the form to the appropriate Regional Office by the date indicated on the notice. The Confirmation of Removal form confirms in writing that the person ordered removed from the facility is, in fact, removed.

*The above notification process is completed by the Caregiver Background Check Bureau, which processes criminal record information and requests for exemptions for all state licensed residential care facilities. The Caregiver Background Check Bureau will send the Regional Office copies of the notification letter and Confirmation of Removal form for tracking and follow-up purposes. Caregiver Background Check Bureau will attempt telephone contact the same day the letter is initiated (dated).*

(a)(1-4) and (b)(1)

**PROCEDURE**

When a person has been ordered out of the facility, the Regional Office must have a tracking system in place to ensure that the Confirmation of Removal form is received at the Regional Office by the date indicated on the notice.

If the Confirmation of Removal form is received by the date indicated on the notice, the Regional Office will file the Confirmation of Removal form in the public section of the facility file; no site visit is required unless determined necessary (see C. below.)

If the Confirmation of Removal form is not received by the date indicated on the notice, the Licensing Program Analyst will telephone the licensee within two (2) business days to verify that the person has been removed from the facility.

**The following procedures are to be followed depending on the information received from the telephone call:**

**A. If the licensee or designated person in charge of the facility states that the person has been removed from the facility but they failed to return the Confirmation of Removal form to the Regional Office, the Licensing Program Analyst will:**

1. Inform the licensee or designee that a citation for failure to return the Confirmation of Removal form will be issued by mail, unless a site visit is made to issue the citation (see C. below). The citation will be issued on the LIC 809 Facility Evaluation Report.

**PROCEDURE (continued)**

2. Require the licensee or designee, as a plan of correction, to fax or deliver the Confirmation of Removal form to the Regional Office by the close of the next business day.

The Confirmation of Removal forms are available to the public at the Department’s website at: [www.cclcd.ca.gov](http://www.cclcd.ca.gov). Internet access is available at most public libraries. The Licensing Program Analyst will inform the licensee or designee of the correct Confirmation of Removal form to complete if the licensee indicates that they no longer have the form. (Note: if the licensee returns the wrong Confirmation of Removal form, it is acceptable as long as the identifying information on the form is completed for both the individual removed and the licensee.)

- LIC 300A Confirmation of Removal form - Exemption Needed
  - LIC 300B Confirmation of Removal form - Exemption Denied
  - LIC 300C Confirmation of Removal form - Exemption Rescinded
  - LIC 300D Confirmation of Removal form - Non-Exemptible Conviction
  - LIC 300E Confirmation of Removal form – Counties
3. Advise the licensee or designee that failure to fax or otherwise deliver to the Regional Office the Confirmation of Removal form by the plan of correction date (the close of the next business day) will result in the assessment of civil penalties of \$50 per day until corrected.
  4. Mail the LIC 809 (via regular mail) with the citation to the licensee and designee within one (1) business day of the plan of correction due date.
  5. The Licensing Program Analyst will know by the time the LIC 809 is mailed whether the plan of correction has been completed. If the licensee complies with the plan of correction to return the form, the violation is cleared and no civil penalties shall be issued. If the plan of correction has not been completed, follow Evaluator Manual Reference Material, Enforcement Section 1-0060 Civil Penalties Assessed for Failure to Meet Plan of Correction Date and Residential Care Facilities for the Elderly regulations Section 87761 for civil penalty procedures. A visit must be made to assess civil penalties.)

**The following is sample language to use for the citation:**

**Citation with Plan of Correction Completed and Deficiency Cleared**

“The following violation of the California Code of Regulations, Title 22, Division 6, deficiency is hereby cited: Section 87356(b) Criminal Record Exemption. The licensee failed to return the Confirmation of Removal form to the Regional Office by the due date indicated on the form. This presents an immediate threat to the health and safety of residents in care as the Confirmation of Removal form is written documentation that the individual ordered removed is, in fact, removed from the facility.



**PROCEDURE (Continued)**

As a plan of correction, the licensee was instructed to fax and/or deliver the Confirmation of Removal form to this Regional Office by (date). Verification was received on (date) and the deficiency is cleared.

Please review this report, make any comments you wish, sign, make a copy for your records, and mail the original back to the Regional Office by (date) at: (note Regional Office and mailing address.)”

**Citation with Plan of Correction Not Completed (Deficiency not Cleared)**

“The following violation of the California Code of Regulations, Title 22, Division 6, deficiency is hereby cited: Section 87356(b) Criminal Record Exemption. The licensee failed to return the Confirmation of Removal form to the Regional Office by the due date indicated on the form. This presents an immediate threat to the health and safety of residents in care as the Confirmation of Removal form is written documentation that the individual ordered removed is, in fact, removed from the facility.

As a plan of correction, the licensee was instructed to fax and/or deliver the Confirmation of Removal form to the Regional Office by (date). Verification has not been received and the deficiency is not cleared.

Please review this report, make any comments you wish, sign, make a copy for your records, and mail the original back to the Regional Office by (date) at: (note Regional Office and mailing address.)”

**B. If the licensee or designee states that the individual has not been removed from the facility, the Licensing Program Analyst will:**

1. Inform the licensee or designee that the individual must be removed from the facility that day and that failure to comply with the order to remove the individual is grounds for administrative action against the license.
2. Inform the licensee or designee that citations for failure to remove the individual and failure to return the Confirmation of Removal form will be issued by mail, unless a site visit is made to issue the citation (see C. below).
3. Follow steps A. 2. – 5. above. Add a citation for violation of Section 87356(a) for failure to remove the individual when ordered to by the Licensing Agency.

**C. The Licensing Agency always reserves the right to make a visit to a facility to determine if an individual has been removed from the facility. If at any time the Licensing Program Analyst has reason to believe that the individual is still working or residing in the facility, the analyst must consult with the Licensing Program Manager to determine if and when an on-site visit is necessary to investigate the situation. If it is determined that the individual is still working or residing in the facility during the visit, then the Licensing Program Analyst will:**

**PROCEDURE (Continued)**

1. Inform the licensee or designee that the individual must be removed from the facility that day, and failure to comply with the order to remove the individual is grounds for administrative action against the license.
2. Issue a citation for violation of Section 87356(a) for failure to remove the individual.
3. Consult with the Licensing Program Manager or County Licensing Supervisor to initiate the appropriate administrative action (revocation and/or temporary suspension order).

**ARTICLE 7. PERSONNEL**

(a) **POLICY**

The licensing agency may require the administrator/licensee to spend additional hours in the facility when it is documented and substantiated that a facility has not been administered according to the regulations, or that the administrator/licensee has not fulfilled his/her responsibilities.

(a) **POLICY (Continued)**

This would typically occur after the facility has received repeated citations for the same violation. The licensing agency is responsible for evaluating each situation and making case-by-case determinations based on the type and number of violations. As there are no guidelines for the number of hours the administrator/licensee is required to spend in the facility, that would be negotiated between the licensee and the licensing agency. (See Reference Material section 1-0100.)

Substitutes are not required to meet the education, certification and experience requirements for an administrator in Regulation sections 87405(e) and (f). Substitutes must be able to meet the requirements and responsibilities of Regulation sections 87405(b), 87405(d)(1) through (7) and (i)(1) through (8), and must be held accountable for the facility operation in the administrator's absence. This includes maintenance and supervision of resident cash resources, personal property and valuables entrusted to facility staff. If a resident does not have ready access to his/her money, or if reasonable access is not made available, it is a violation not only of residents' rights but also of the administrator's responsibilities. [See Regulation section 87405(d)(3).] However, it would be acceptable for a licensee to establish reasonable business hours during which time residents' money would be made available to them (e.g., not past 10 p.m.).

**PROCEDURE**

Review facility records and interview other staff and residents as appropriate to determine if the administrator is in the facility and spending an adequate number of hours there to ensure the operation and management of the facility as specified in Regulation and Regulation Interpretations Section 87405(a). Document findings on the Facility Evaluation Report (LIC 809) and other supportive reports as required.

Determine by review of the Personnel Record (LIC 501) and work schedule that the designated substitute administrator(s) is/are qualified and scheduled to provide coverage in the absence of the administrator.

(d) **POLICY**

There is no formal experience required for administrators of facilities with a licensed capacity of fewer than 16 residents, providing the administrator has completed a 40-hour certification program prior to licensure. However, administrators or applicants of these facilities are still required to have the knowledge and abilities required to properly run the facility. This means that once an administrator is employed, this knowledge and these abilities must be continually demonstrated by the proper running of the facility. Based upon observation of conditions, a facility could be cited for not having an administrator who meets these qualifications even though he/she was initially thought to possess them and was approved to be hired.

(e) and (f) **POLICY**

If an administrator operates two facilities, the minimum qualifications are based on the **individual** capacity--not the combined capacity.

Educational requirements must be verified by originals or copies of official grade slips/transcripts, certificates or signed documentation on letterhead from a college, an adult education program or other recognized educational institution that offers semester or quarter units.

References must be used to verify experience requirements.

**PROCEDURE**

Review the Personnel Record (LIC 501) and the personnel files to ensure that the administrator has the applicable qualifications.

(g) **POLICY**

Licenses are responsible for requiring that continuing hours of education are being accumulated toward the 20 clock hours. If an administrator employed continuously for one year does not accumulate a total of 20 clock hours during that year, cite the licensee on the Facility Evaluation Report (LIC 809). Hours of credit are based on **actual** number of hours of instruction.

This regulation is very broad and only requires that courses be related to the study of the aging process and/or facility administration. This includes courses that assist licensees/administrators in the overall management of the facility and upgrade their ability to care for elderly persons.

As a general guideline, courses are acceptable if:

1. They are provided by a person who possesses the skill and knowledge necessary to teach others in a particular subject area (that is, a professional or expert in that field); and
2. They will enhance the administrator's ability to attain the knowledge and abilities outlined in Regulation Section 87405(d) and to meet the responsibilities outlined in Regulation Section 87405(i).

Courses offered by or through provider associations must receive prior approval from the Program Support Bureau. Licensing agencies will be informed of approved courses on an annual basis.

Verification must consist of official grade slips/transcripts, certificates or signed documentation on letterhead from college/adult education, a recognized educational institution/organization or a provider association.

The continuing education requirement does not typically apply to substitute administrators. However, if the substitute works 50 percent of the time, then the following question must be asked: "Who really is the substitute?" Such situations should be individually evaluated by the licensing agency to determine the appropriate application of this requirement.

Newly hired administrators will begin compliance with the 20 clock hours of continuing education upon the date of employment. There is no grandfathering provision for this new requirement. The licensee is responsible for providing verification of completion of the continuing education in the personnel file.

**87405      ADMINISTRATOR - QUALIFICATIONS AND DUTIES**  
(Continued)

**87405**

**PROCEDURE**

Review personnel files of administrators to ensure the facility is complying with the requirement of 20 hours of continuing education pursuant to Regulation section 87405(g).

(h)

**POLICY**

Administrators employed prior to July 1, 1982 have been grandfathered in with regard to the experience and education requirements specified in Regulation Sections 87405 (e) and (f). Administrators will remain qualified provided that they have no break in employment/licensure. A break in employment is considered a period of time in which the administrator is not actually employed in a residential care facility for the elderly. Where the licensee is the administrator, the date of licensure is considered to be the date of employment.

Additionally, this provision is tied to facility capacity. For example, administrators who transfer from a facility licensed for 16-49 residents to a facility licensed for 50 or more residents do not retain their grandfathering privileges. These administrators must meet the new educational requirements established for the larger facility.

However, administrators may transfer to a comparable-sized facility when there is no change in the administrator's minimum qualifications. Note that Regulation section 87405(d) requires that administrators have, among other things, the ability to comply with licensing laws, rules and regulations. Therefore, an administrator who does transfer to a comparable-sized facility under this grandfathering provision must also have demonstrated the ability to administer the previous facility in accordance with licensing laws, rules and regulations.

If a transfer to another facility is planned, the administrator should request from the licensing agency a letter verifying his/her employment and ability as specified above. This letter must be kept on file for future reference.

(i)(5) and (6)

**POLICY**

Such provisions may include additional staff, safety and emergency information printed in Braille, and lights to alert the deaf to emergency sounds.

**87411      PERSONNEL REQUIREMENTS - GENERAL**

**87411**

(a)

**POLICY**

In facilities licensed for 16 or more residents, the licensing agency will pay particular attention to the need for additional support staff, based on such factors as use of postural supports

(see Regulation and Regulation Interpretations section 87608), bathing, sleeping and eating schedules, lack of necessary supervision, etc. As a general rule of thumb, if a licensee is cited for recurring violations (such as poor maintenance of the facility or lack of provision of basic services, etc.), that could indicate insufficient staff.

This regulation does not require facilities to hire staff to perform both support- and housekeeping-type duties unless the priority regarding care and supervision for residents has become subordinate to maintenance and housekeeping chores. Additionally, this regulation does not preclude a resident from performing household duties that are geared toward his/her self-help skills provided the participation is voluntary. No household duties will go undone because a resident refuses to participate in such a plan.

### **PROCEDURE**

The ratio of on-duty staff to residents should be observed during site visits. The following should be reviewed: the Personnel Report (LIC 500); the Personnel Record (LIC 501); the Preplacement Appraisal Information (LIC 603); the Appraisal/Needs and Services Plan (LIC 625); and other documents as appropriate to determine if a facility has sufficient support staff to meet the requirements of this regulation and Regulation section 87608. It is advisable to schedule visits during hours when the facility is fully functioning (e.g., during bathing, eating or activities). The Facility Evaluation Report (LIC 809) or the Complaint Investigation Report (LIC 9099) should be used to document the need for additional staff.

An increasing number of residents in residential care facilities for the elderly are using privately paid personal assistants (also referred to as “private caregivers”). A privately paid personal assistant is hired by the resident, the resident’s family, or the resident’s conservator to provide personal services to the resident in the facility.

Under Health and Safety Code section 1569.312, a residential care facility for the elderly must provide basic services, which by definition include assistance with activities of daily living. Regulation sections 87464(f), Basic Services, and 87608(a), Personal Assistance and Care, more specifically describe these activities to include personal assistance and care as needed by the resident with activities of daily living that the resident is unable to perform for him/herself. The licensee cannot delegate these services. The services of privately paid personal assistants **do not** relieve the licensee of the responsibility to meet all licensing statutory and regulatory requirements. The licensee must ensure that there are always sufficient staff to meet the resident’s needs, and that staff are aware of the resident’s current mental and physical functioning level, health conditions, and needs for care and supervision.

**Privately paid personal assistants may only provide services other than those the licensee is required to provide.** The licensee must provide the basic services specified in Regulation section 87464(f) and the personal assistance and care specified in Regulation section 87608(a). However, privately paid personal assistants can provide services such as companionship, or additional baths beyond what the licensee is required to provide. They can also assist with self-administration of medication, but only if the resident’s physician documents that the resident can store and administer his/her own medications.

**PROCEDURE (Continued)**

A privately paid personal assistant **cannot** assist the resident with care relating to any of the incidental medical services described in Regulation **sections** 87605 through 87631.

A resident’s use of a privately paid personal assistant does not in any way diminish the licensee’s responsibility to protect the resident’s health and safety and to ensure that the resident’s needs are met.

**CRIMINAL RECORD CLEARANCE**

Unless determined to be exempt from criminal background check requirements, a privately paid personal assistant must have a criminal record clearance or exemption. Health and Safety Code **section** 1569.17 and Regulation **section** 87356 specify which persons are subject to criminal background check requirements in residential care facilities for the elderly. Following are brief discussions of exemptions that do and do not apply to privately paid personal assistants:

- Statute provides that “a spouse, significant other, relative, or close friend of a client is exempt” if the individual “is visiting the client and provides direct care and supervision to that client only.” This exemption **does not apply** to privately paid personal assistants because an assistant is acting in the capacity of an employee rather than as a friend or relative.
  
- Statute exempts “a third-party contractor or other professional retained by a client and at the facility at the request or by permission of that client.” This exemption **does not apply** to privately paid personal assistants, but instead addresses persons such as the resident’s accountant, social worker, etc.
  
- Statute also exempts licensed or certified medical professionals from criminal background check requirements. Thus, a privately paid personal assistant who is also a licensed medical professional is exempt. In addition, a privately paid personal assistant who has current certification as a Certified Nursing Assistant and/or a Certified Home Health Aide is exempt. The licensee must keep a copy of the person’s current license or certification on file.

**HEALTH SCREENING AND TUBERCULOSIS TESTS**

Because privately paid personal assistants are **not attached** to the facility, they are **not required** to have a health screening or tuberculosis test as required by Regulation **section** 87411(f) for facility personnel.

**PROCEDURE      (Continued)**

**REPORTING REQUIREMENTS**

The licensee should establish procedures to ensure that privately paid personal assistants are aware of incidents/occurrences that must be reported to the licensee, including, but not limited to, items listed in Regulation Sections 87211, Reporting Requirements, and 87463, Reappraisals. The procedures should specify how a privately paid personal assistant is to inform the licensee of these items .

(c) **POLICY**

This requirement for on-the-job training or related experience also applies to administrators.

(c)(1) **POLICY**

If licensees or facility employees are currently certified as Standard First Aid Instructors, they may train other facility staff. Certification as an instructor must be provided by the American Red Cross or other authorized agency.

Facility employees who are licensed medical professionals do not have to complete first aid training, but they shall not provide training to other employees unless they are also certified as Standard First Aid Instructors.

Staff such as cooks, gardeners, and janitors shall not be required to complete first aid training unless they also serve in the capacity of direct care staff or, at various intervals, are called upon to provide direct care and supervision of the residents.

**PROCEDURE**

Review personnel records to determine that all staff required to have first aid training have a current certificate on file as proof of training.

If training is being provided by another facility employee, check to see that the person has a current Standard First Aid Instructor certificate.

Currently a hands-on practice component is not required; however, it is recommended that any online training that has a skills competency component include a hands-on practice component. The hands-on practice component would increase the confidence level of the participant and consequently augment staff’s ability to perform their job duties. The hands-on practice component should be provided and overseen by an on-site instructor and address skills appropriate to the residents served.



(f) **POLICY**

The health screening must be completed and signed by a physician or other licensed medical professional working under the supervision of the physician (for example, a nurse practitioner or physician’s assistant). The Health Screening Report--Facility Personnel (LIC 503) is available for this purpose. The physician’s evaluation will certify that the person’s general health is adequate to carry out required responsibilities.

Religious facilities run by adherents of a well-recognized church or religious denomination that relies solely on prayer or other spiritual means of healing--and that are subject to licensure (see Regulations Interpretations section 87107)--will under certain conditions be granted appropriate waivers to the following: Regulation sections 87411(f); 87412(b); 87456(a)(3); 87458; 87506(b)(7); 87455(c)(1); and 87459(a)(7)(F) and (G). The following conditions apply to the granting of waivers to these religious facilities:

1. The entire administrative staff must be adherents of the religion.
2. All residents admitted to the facility must be adherents of the religion.
3. All non-administrative staff who are not adherents of the religion must be informed in writing by the facility that **all** staff are covered by the waiver; and, therefore, that other employees have not been medically cleared for freedom from tuberculosis or other infectious diseases.

**If ALL of the administrative staff of the facility are not adherents of the religion, a waiver for the facility will not be granted.**

Religious facilities that do not meet the above conditions for a waiver, or any nonreligious facility, may be granted exceptions to the above sections for staff or residents who are adherents of a well-recognized church or religious denomination that relies solely on prayer or other spiritual means of healing, except as follows: No exceptions will be granted to the requirement for a tuberculosis test for staff or residents, or to allow a resident with active communicable tuberculosis to reside in a facility.

(g) **POLICY**

An increasing number of residents in residential care facilities for the elderly are using privately paid personal assistants (also referred to as “private caregivers”). For information on criminal record clearances/exemptions for privately paid personal assistants, please see Regulation Interpretations Section 87411(a).

**87411 PERSONNEL REQUIREMENTS – GENERAL (Continued)**

**87411**

**(h) POLICY**

“Specialized skills” are skills possessed by professionals such as physical therapists, psychiatrists, nurse practitioners, etc. The term “recognized professional standards” is intended to mean certification or licensure relative to the particular skill in question. If no license or certification is available, prior approval through the waiver/exception process must be obtained for the provision of services by such persons.

**(i) PROCEDURE**

See Regulation and Regulation Interpretations sections 87411(a), 87457 and 87463.

**(j) POLICY**

An increasing number of residents in residential care facilities for the elderly are using privately paid personal assistants (also referred to as “private caregivers”). For information on privately paid personal assistants, please see Regulation Interpretations section 87411(a).

**(j) PROCEDURE**

Review the Personnel Report (LIC 500) and the work schedule; and, if necessary, interview volunteers/staff/residents to verify that any volunteers utilized by the facility are supervised and are not included in the staffing plan.

**87412 PERSONNEL RECORDS**

**87412**

**(a) POLICY**

The Personnel Record (LIC 501) is available for this purpose.

**PROCEDURE**

During the inspection of the facility personnel records, use the Review of Staff/Volunteer Records (LIC 859) to ensure a complete review.

**(a)(4) POLICY**

This regulation subsection applies to persons who supervise employees, or who supervise or care for residents.

**(b) POLICY**

See Regulation and Regulation Interpretations section 87411(f).

**87413      PERSONNEL - OPERATIONS      87413**

(b)      **PROCEDURE**

Review the Facilities Staff Work Schedule (LIC 507) or a comparable record for compliance.

**87415      NIGHT SUPERVISION      87415**

(a)(1-4)      **POLICY**

Under no circumstances can a resident be hired/used as the on-call person. On-call staff who are not required to be on the premises must be easy to contact and must be located within a reasonable distance of the facility in order to be able to effectively respond to emergency calls within ten minutes.

The use of local emergency services does not eliminate the requirement to have an on-call person. On-call personnel are typically used in emergency situations to assist in calming residents after an emergency, a power failure, etc. The police, fire department, paramedics and other local emergency services remain the appropriate resources for actual emergency services.

(a)(5)      **POLICY**

**NOTE:** The intent of this requirement is to have a night staff person located to enable immediate response to the signal system and to have an individual designated who can respond efficiently to a signaling resident. The staff person is not expected to be confined to the signal system. If the night staff person makes routine inspections of the facility several times a night, it is expected that there would be either visual signal systems located at different locations throughout the facility or an auditory signal loud enough to summon staff. That would meet the intent of this regulation.

**ARTICLE 8**

**RESIDENT ASSESSMENTS, FUNDAMENTAL SERVICES AND RIGHTS**

**87455      ACCEPTANCE AND RETENTION LIMITATIONS      87455**

(b)(6)      **POLICY**

Health and Safety Code Section 1569.2(k) defines a residential care facility for the elderly as a group housing arrangement chosen voluntarily by residents over the age of 60. But a residential care facility for the elderly may also accept persons under the age of 60 with compatible needs. Licensees are **not** required to obtain an exception for residents under the age of 60 as long as the number of persons under the age of 60 does not exceed 25 percent of the residents.

**POLICY (Continued)**

The licensee is responsible, however, for determining (1) that the needs of a resident under the age of 60 are compatible with those of elderly residents in care and (2) that the facility can meet those needs. [See also Regulation sections 87455(c)(3) and (c)(4).] The licensee must ensure the compatibility of nonelderly persons by screening such prospective residents in compliance with Regulation sections 87458, 87457, 87459, 87461 and 87462. The licensee is also responsible for documenting the assessment and determination of compatibility in the resident's record as set forth in Regulation section 87505.

**PROCEDURE**

During the site visit, observe nonelderly residents, if possible, and review their records for documentation of the determination of compatibility. Appropriate documentation would include the Physician's Report (LIC 602 or 602A), the Preplacement Appraisal Information (LIC 603), the Appraisal/Needs and Services Plan (LIC 625), and letters from placement agencies, health professionals or consultants stating that the resident's needs are compatible with those of elderly residents and can be met by the facility's program of services. Both the record review and observation of the resident's behavior should support the determination that the resident is appropriately placed in the facility.

If the records are unclear, not current, or otherwise do not accurately document the resident's compatibility, cite Regulation section 87463(a) and require a reappraisal. If the records or observation of the resident indicate that the resident is not compatible, cite the licensee for violation of Regulation section 87455(c)(3).

If the number of residents under the age of 60 exceeds 25 percent, the licensee should apply for an age exception for the residents that caused them to exceed the ratio.

(c)(1)

**POLICY**

Regulation section 87455(c)(1) specifies that no resident with active communicable tuberculosis can be admitted or retained in a residential care facility for the elderly. If the facility is conducted by and entirely for adherents of any well-recognized church or religious denomination that relies solely on prayer or other spiritual means of healing, Regulation section 87455(c)(1) will be waived. However, if even one resident or facility staff member is **not** a member of the church or religious denomination in question, Regulation section 87455(c)(1) **cannot** be waived. This is consistent with Regulation Interpretations section 87411(f).

**PROCEDURE**

For more information regarding waivers and exceptions to regulations for religious facilities, see Regulation Interpretations section 87411(f).

(c)(3)(B) **POLICY**

For residents who because of dementia would be unable to leave the building without assistance in an emergency, licensees must request either a waiver or an exception from Regulation section 87455(c)(4).

Licensees requesting waivers pursuant to Regulation section 87705 to permit locked exterior doors or locked perimeter fence gates must also have a waiver or exceptions to Regulation section 87455(c)(4). The need for these resident safety measures is compelling evidence that the residents need a greater amount of care and supervision regardless of their ambulatory status.

(c)(3)(B) **PROCEDURE**

Waiver and exception requests must also conform to Regulation sections 87209 and licensees must present evidence that proposed alternatives will meet residents' needs.

Also see Regulation Interpretations section 87455(b)(6).

(c)(4) **POLICY**

Bedridden persons may be admitted and retained in residential care facilities for the elderly that secure and maintain an appropriate fire clearance, provided several conditions are satisfied. The prohibition against retaining people in the facility needing 24-hour nursing care or monitoring remains. Until regulations are adopted, licensing staff will use the statutory provisions in Health and Safety Code section 1569.72 as the authority for allowing bedridden residents to reside in a facility.

A bedridden resident is a nonambulatory person [as defined in Regulation section 87101(n)(2)] who also:

1. requires assistance in turning and repositioning in bed;

or

2. is unable to independently transfer to and from bed, except in facilities with appropriate and sufficient care staff, necessary mechanical devices, and safety precautions, as determined by the Director in regulations.

Due to the serious health consequences of being bedridden, permission to accept or retain a bedridden person must be approved on an exception basis by the licensing agency.

**PROCEDURE**

To determine whether a resident requires assistance to turn and reposition in bed (i.e., is bedridden), take the following steps as appropriate to the situation:

1. Review the resident's file, with particular attention to the Physician's Report (LIC 602 or 602A) and the Preplacement Appraisal (LIC 603 or 603A). If the LIC 602 or 602A indicates that the resident is bedridden, check for the expected date of recovery. Also look for hospital or emergency room discharge papers, since the LIC 602 or 602A may not be current. If the LIC 602 or 602A is not current, cite Regulation sections 87506(a) and (b)(8), and require a new assessment.
2. Interview facility staff, asking specifically what kind of help they give the resident while he/she is in bed.
3. Observe the resident. Have a facility employee ask the resident to demonstrate that he/she can turn and reposition in bed without help.

**POLICY**

To admit or retain a resident who is bedridden (excluding a temporary illness or recovery from surgery):

1. A bedridden fire clearance must be obtained.
  - a. At the request of the applicant/licensee, the licensing agency will submit a Fire Safety Inspection Request form (STD 850) for a bedridden fire clearance to the local fire authority on behalf of the applicant/licensee.
2. The applicant/licensee must meet the following criteria to obtain an exception to accept or retain a bedridden person:
  - a. Staff who are to provide direct care to the bedridden resident must receive training from a licensed health care professional on the appropriate care for a bedridden person prior to caring for the resident. The training must include standard medical procedures to safely reposition bedridden residents at least every two hours.

A licensed health care professional means a physician or a person licensed or certified under Division 2 of the Business and Professions Code to perform necessary resident care procedures prescribed by a physician. Health care professionals include registered nurses, public health nurses, licensed vocational nurses, psychiatric technicians, physical therapists, occupational therapists and respiratory therapists.

**87455      ACCEPTANCE AND RETENTION LIMITATIONS (Continued)      87455**

- b. The facility must maintain training documentation in each staff member's personnel file, including the name and a copy of the current California license of the health care professional who trained the staff member; the date the training occurred; and the topics covered.
  - c. The licensee has night staff capable of repositioning the bedridden resident.
  - d. The licensee has 24-hour telephone access to a licensed medical doctor, nurse practitioner or registered nurse should questions arise concerning the bedridden person's condition. This contact information must be current and readily available to staff.
  - e. The plan of operation must include the type of care the facility will provide to bedridden persons.
  - f. The licensee has indicated what equipment and appliances are available to assist and protect bedridden residents. Equipment and appliances may include, but are not limited to:
    - Egg-crate mattress (or equivalent to relieve pressure)
    - Heel and elbow protectors
    - Partial bed rails (An exception is not required for a bedridden person.)
    - Screens and/or curtains to ensure privacy if the resident shares a room with another resident
    - Over-bed table
    - Bedside commode
    - Urinal
    - Bed pan
    - Wheelchair
3. The licensee must notify the licensing agency if a new bedridden person will be placed in the facility; or if building modifications are planned that would affect the existing fire clearance. The licensing agency will determine whether a new bedridden fire clearance is required.

**POLICY (Continued)**

4. Any other changes to the status of the license, the licensee, the licensing category, the location of the facility, etc., will require a new bedridden fire clearance.

Temporary bedridden status may result from surgery, strokes, fractures, sprains and other traumas; acute episodes of chronic conditions, such as lower back pain or a flare-up of rheumatoid arthritis; and other conditions that **temporarily** make the person unable to independently turn and reposition in bed.

**POLICY (Continued)**

Licensees approved to retain a bedridden resident in excess of 14 days must cooperate with the local fire authority to secure approval and other means of protection as necessary to allow the resident to remain in the facility.

Temporary bedridden status may be extended up to 60 days provided the physician indicates that the individual may improve or recover. A resident bedridden in excess of 60 days is considered bedridden, and the licensee must meet the additional requirements necessary to secure an exemption, including a fire clearance from the local fire authority.

(d)(1)

**POLICY**

For purposes of this section, “requires assistance” means that another person must physically help (that is, lay hands on the resident’s body) to turn or reposition the resident in bed. This assistance by another person may range from holding the resident’s hand, to providing support while the resident turns/repositions in bed, to no participation at all by the resident while the other person lifts and turns the resident’s limbs and torso. A resident who requires **any** degree of assistance by another person to turn and reposition in bed meets the definition of “requiring assistance.”

Residents who are able to turn and reposition themselves in bed by using a mechanical device such as a trapeze affixed to the bed or a half-rail on the side of the bed, without the assistance of another person, are considered to be able to turn or reposition in bed.



**POLICY (Continued)**

**NOTE:** (The use of a bedrail requires prior approval by exception; see Regulation Section 87608.)

For purposes of this section, “turning” means that when a resident is lying in bed, he/she is able to move from the left or right side onto the stomach or back, or to move from the back or stomach onto the left or right side. “Repositioning” means that when a resident is lying in bed, he/she is able to change position in the bed, to cross or uncross the legs, to curl up or stretch (fully extend) the limbs and body, to shift, wiggle or push the body up and down in the bed.

If it is determined that the resident is bedridden, check the Physician’s Report (LIC 602 or 602A) for the cause of the bedridden condition and to see if the doctor has indicated an expected recovery date. Also check the file for documentation that the licensee has notified the local fire authority of the presence of the bedridden person. [See Regulation and Regulation Interpretations Section 87455(g).]

If the licensee has not requested an exception for the bedridden resident, request the licensee to develop a relocation plan. This plan is required because the licensee must be able to act immediately to relocate the resident if the exception request is denied.

(d)(2)

**POLICY**

The licensee must notify the local fire authority having jurisdiction over the facility of the presence of a transfer dependent resident and whether the dependency is temporary or permanent. This notification must be made by telephone or in writing **within 48 hours** of the resident’s admission or retention. Documentation of the notification must be kept in the resident’s file. (Transfer dependency is part of the definition of a bedridden person in the State Fire Marshal’s regulations.)

**PROCEDURE**

When a transfer dependent resident is observed in a facility, take the following actions:

- Review the resident’s records to ensure that the licensee has notified the local fire authority of the presence of the transfer dependent person.
- If the licensee has not notified the local fire authority, cite Regulation Section 87455(g) and require immediate correction. Have the licensee notify the Regional Office regarding the resident’s bedridden status within 24 hours of the visit.
- If the licensee is requesting permission to accept or retain a bedridden person beyond 14 days, and **has not been cited**, the documentation must be submitted to the licensing agency within ten days from the date the licensee notifies the licensing agency that the bedridden status is likely to last more than 14 days.

**87455      ACCEPTANCE AND RETENTION LIMITATIONS (Continued)      87455**

(f)(3)      **POLICY**

- If the licensee obtains approval to retain a temporarily bedridden resident for more than 14 days, but the resident’s bedridden status persists beyond the date estimated in the request for approval, the licensee must submit another request for approval, including updates of all of the information listed above.
- Licensing agency approval is needed to maintain the resident in the facility.
- The licensing agency must provide written approval or denial of a licensee’s request to retain a bedridden resident for more than 14 days. The basis for the decision will be whether the resident’s health and safety are adequately protected in the facility and whether transfer of the person to a higher level of care is necessary. (Also see Reference Material §section 2-5000, Waiver and Exception Procedures.)
- If the request is approved, a “tickler” should be established to enable timely verification that the resident’s bedridden status has ceased by the date estimated in the licensee’s approval request.
- If the request is denied, the denial letter must include the reason for the denial, the date by which the licensee must submit a written relocation plan (see NOTE below) and notification regarding the licensee’s appeal rights. [See Regulation §section 87637(b)(2) for relocation plans and §section 87639 for licensee appeal rights.]

(f)(3)      **POLICY (Continued)**

**NOTE:**      If the exception request is denied, a new relocation plan is not needed, as this was required with the initial citation. Review the plan, revise it as necessary, and order the licensee to implement the approved plan.

If the licensee fails to submit the updated request, follow the procedures above in (c)(5).

(g)      **POLICY**

The licensee must notify the local fire authority of the presence of BOTH transfer dependent persons and those who require assistance to turn and reposition in bed. See Regulation and Regulation Interpretations §sections 87455(d)(1) and (d)(2) for detailed information.

**87456      EVALUATION OF SUITABILITY FOR ADMISSION      87456**

(a)(1)      **POLICY**

Health and Safety Code §section 1569.38 requires that, during the admission process, the following information be provided in writing:

Each residential care facility for the elderly shall place in a conspicuous place copies of all licensing reports issued by the department within the preceding 12 months, and all licensing reports issued by the department resulting from the most recent annual visit of the department to the facility.

**87456      EVALUATION OF SUITABILITY FOR ADMISSION**

**87456**

**POLICY (Continued)**

This subdivision shall not apply to any portion of a licensing report referring to a complaint that was found by the department to be unfounded or unsubstantiated. The facility, during the admission process, shall inform the resident and the resident's responsible person in writing that licensing reports are available for review at the facility, and that copies of licensing reports and other documents pertaining to the facility are available from the appropriate district [regional] office of the department. The facility shall provide the telephone number and address of the appropriate district [regional] office.

Health and Safety Code section 1569.38 may be cited if a violation of this law is documented.

(a)(3)

**POLICY**

If the facility is conducted by and entirely for the adherents of any well-recognized church or religious denomination that relies solely on prayer or other spiritual means of healing, Regulation section 87456(a)(3) will be waived.

**PROCEDURE**

See Regulation and Regulation Interpretations section 87411(f) for information relative to waivers of other regulations for religious facilities.

**87457      PRE-ADMISSION APPRAISAL**

**87457**

(a)

**POLICY**

The resident's ability to manage his or her own funds must be assessed by the licensee and included in the preadmission appraisal.

**PROCEDURE**

Verify that the preadmission appraisal identifies the resident as being either able or unable to manage his or her own funds. See Regulation Interpretations section 87463 regarding the reappraisal requirement.

(c)(4)

**POLICY**

The Preplacement Appraisal Information form (LIC 603) is available for this purpose.

**87457      PRE-ADMISSION APPRAISAL      87457**

(c)(4)      **PROCEDURE**

Review the Preplacement Appraisal Information (LIC 603), the Physician's Report (LIC 602 or 602A), and the Appraisal Needs and Services Plan (LIC 625) to ensure that all requirements have been met.

Also see Regulation and Regulation Interpretations Section 87455 for acceptance and retention limitations.

**87458      MEDICAL ASSESSMENT      87458**

(a)      **POLICY**

The Physician's Report (LIC 602) is available for this purpose.

The licensing agency will require the licensee to obtain a current written medical assessment if necessary to verify the appropriateness of placement.

However, if a facility is conducted by and entirely for the adherents of any well-recognized church or religious denomination that relies solely on prayer or other spiritual means of healing, this requirement will be waived.

**PROCEDURE**

Review the resident's medical assessment to ensure that it has been properly signed and dated by a physician or a licensed medical professional working under the direct supervision of a physician (such as a nurse practitioner or physician's assistant).

For information regarding waivers of other regulations for religious facilities, see Regulation and Regulation Interpretations section 87411(f).

**87459      FUNCTIONAL CAPABILITIES      87459**

(a)      **POLICY**

The Preplacement Appraisal Information form (LIC 603) is available for this purpose.

If the facility is conducted by and entirely for the adherents of any well-recognized church or religious denomination that relies solely on prayer or other spiritual means of healing, Regulation sections 87459 (a)(7)(F) and (G) will be waived.

**87459      FUNCTIONAL CAPABILITIES      87459**

**PROCEDURE**

See Regulation and Regulation Interpretations section 87455, Acceptance and Retention Limitations, and Regulation Section 87457, Pre-Admission Appraisal—General.

For information relative to waivers of other regulations for religious facilities, see Regulation and Regulation Interpretations sections 87107(a)(3), 87411(f) and 87455(c)(1).

**87461      MENTAL CONDITION      87461**

**POLICY**

The Preplacement Appraisal Information form (LIC 603) is available for this purpose.

**PROCEDURE**

See Regulation and Regulation Interpretations sections 87457 and 87459.

**87462      SOCIAL FACTORS      87462**

**POLICY**

The Preplacement Appraisal Information form (LIC 603) is available for this purpose.

**PROCEDURE**

See Regulation and Regulation Interpretations sections 87457 and 87459.

**87463      REAPPRAISALS      87463**

(a) **POLICY**

If a significant change occurs in the resident’s ability to manage his or her own funds, the licensee is required to complete a reappraisal documenting this change in functional capabilities.

It is the responsibility of the licensee to retain only those residents whose needs can be met.

(b) **POLICY**

If the facility is conducted by and entirely for the adherents of any well-organized church or religious denomination that relies solely on prayer or other spiritual means of healing, Regulation Section 87463(b) will be waived except for notification of family or responsible person.

**87463    REAPPRAISALS**

**87463**

**PROCEDURE**

For information relative to waivers of other regulations for religious facilities, see Regulation and Regulation Interpretations [section 87411\(f\)](#).

Review the Preplacement Appraisal Information form (LIC 603) and the Appraisal/Needs and Services Plan (LIC 625) and, if necessary, compare with reports from facility staff, doctors, dentists, social workers, psychiatrists, etc., to see if changes have occurred. Verify that an updated plan has been done if an updated plan is necessary.

See Regulation and Regulation Interpretations [section 87455](#).

**87464      BASIC SERVICES**

**87464**

(d)

**PROCEDURE**

Review the resident's preadmission appraisal, reappraisal(s), if any, and admission agreement to verify that the licensee is providing basic services consistent with these documents and the resident's needs.

See Regulation and Regulations Interpretations [section 87217\(a\)](#) for the licensee's responsibilities regarding handling residents' funds.

Refer also to the definition of care and supervision in Regulation [section 87101\(c\)\(3\)](#).

(e)(2)

**POLICY**

For residents who are Supplementary Security Income/State Supplementary Payment recipients, the licensee is prohibited from charging an amount for basic services that is in excess of the Supplementary Security Income/State Supplementary Payment rate.

Pursuant to Welfare and Institutions Code [section 11006.9](#), it is grounds for license revocation if a licensee obtains, as an additional cost of care, Supplementary Security Income/State Supplementary Payment funds allocated to a recipient for his or her personal and incidental needs.

This regulation allows Supplementary Security Income/State Supplementary Payment residents who prefer a private room, when a double room is available, to be charged a maximum of 10 percent of the board and room portion of their Supplementary Security Income/State Supplementary Payment grant (not the care and supervision portion). Such charges must be listed as optional services in the admission agreement, and the agreement must specify the additional charge up to the 10 percent maximum.

(e)(3) **POLICY**

This regulation allows an extra charge (beyond the basic rate) for special food items/services such as kosher food.

(e)(2) and (3) **PROCEDURE**

Review admission agreements to verify that charges for optional services comply with this regulation, are agreed upon by the resident and/or responsible person, and are itemized on the agreement. In addition, ascertain that an extra charge for a private room for a Supplementary Security Income/State Supplementary Payment resident does not exceed the limits of this regulation. If the facility is charging residents for the provision of special food services/products, review the menus. If, for example, the food service is consistently kosher for most or all residents, an extra charge for kosher food is not justified.

(f) **POLICY**

An increasing number of residents in residential care facilities for the elderly are using privately paid personal assistants (also referred to as “private caregivers”). For information on privately paid personal assistants, please see Regulation Interpretations section 87411(a) (Personnel Requirements - General).

(f)(5) **POLICY**

If the facility is conducted by and entirely for the adherents of any well-recognized church or religious denomination that relies solely on prayer or other spiritual means of healing, Regulation section 87464(f)(5) will be waived.

Section 87465(a)(1) states that the licensee shall arrange, or assist in arranging, for medical and dental care appropriate to the conditions and needs of the residents. Therefore the licensee must provide any needed supervision of medication for residents, regardless of payment. The licensee may charge private pay residents for this service. The charges by the licensee must be clearly spelled out in the Admission Agreement (87507), which must show that medication management is a basic service and indicate the fee for this service; otherwise the resident is not obligated to pay. If the resident agrees to the charge, then the matter is between the resident and the licensee. The Admission Agreement would need to be revised if the resident’s needs (as documented by a reappraisal) and/or use of medication management services increased. If the licensee increases the medication management fee or imposes a new medication management fee, then a 30-day notice is required.

**PROCEDURE**

For information regarding waivers to other regulations for religious facilities, see Regulation Section and Regulation Interpretations section 87411(f).





**POLICY (Continued)**

2. Itemized. When the admission agreement itemizes fees for basic services, the agreement must specify costs associated with the provision of transportation to meet medical and dental needs. **The agreement must also specify the hours and days of the week this transportation will be available for the service fee.** In addition, the agreement must disclose the **true cost** of transportation, which may include items such as:
  - Fees for emergency or other nonscheduled transportation needs.
  - Fees for arranging nonfacility-provided transportation.
  - Fees for nonfacility-provided transportation (approximate) and how this transportation will be provided (e.g., taxi, van, bus, community service providers, or family members).
  - Fees for extra mileage.
  - Fees for escorts.

**TRANSPORTATION AND THE ADMISSION AGREEMENT**

The admission agreement should be reviewed to try to determine answers to the following questions:

1. Does the facility provide transportation directly, or does it arrange for transportation?
2. Is transportation included in the basic rate for private pay residents? If not, does the agreement specify the costs of transportation, including fees for the services in Number 2 above (re itemized fees for basic services for private pay residents)?
3. Is there a transportation schedule, or is transportation provided on an as-needed **basis?**

(a)(3)

**POLICY**

The provision of an isolation room or area does not require the licensee to maintain an extra bedroom for that purpose. In cases where isolation is deemed necessary, the licensee may designate the affected resident's own bedroom as the isolation room. If the resident shares his/her bedroom with another resident, alternative sleeping arrangements that provide for privacy must be made for the resident who is not ill. Such an arrangement cannot exceed ten days.

**POLICY (Continued)**

(a)(5) **POLICY**

Assistance with medications does not include the actual administration of medications by the licensee or facility staff to residents. For example, “assistance” includes passing oral medications to residents for self-administration; it does not include placing the medication in a resident’s mouth or forcing him/her to swallow medication.

Medication cannot be used by anyone other than the person for whom it is prescribed. If a resident refuses to take medication, it is the licensee’s responsibility to report the resident’s refusal to the resident’s physician and other responsible person.

(a)(6)(C) **POLICY**

No exemption is necessary to provide assistance in administering eye, ear and nose drops to residents under the following conditions:

1. The resident is not able to self-administer his/her own eye, ear or nose drops due to tremors, failing eyesight and other similar conditions; the care is routine (standard mechanically performed); and the resident’s condition is chronic and resistant to sudden change (stable), or temporary in nature and expected to return to a condition normal for the resident.
2. The resident’s physician must provide documentation stating: 1) that the resident cannot self-administer drops; 2) whether the resident’s medical condition(s) is stable; and 3) that the resident’s care is routine, so that facility staff may be trained to assist with administering drops in accordance with the treating physician’s instructions.
3. The following procedures and training are necessary in order for facility staff to assist in administering drops:
  - The licensee must obtain documentation from the resident’s physician outlining the procedures for care to be performed by a licensed professional and/or facility staff, including recognizing objective symptoms and how to respond to them. This documentation must be kept in the resident’s file.
  - The licensee must document the names of facility staff trained in the procedures. This documentation must be kept in the individual employee's file.
  - All staff must complete the required training on resident-specific procedures and universal precautions (provided by a local health facility, county health department or other local training resource) prior to providing the service.

**87465      INCIDENTAL MEDICAL AND DENTAL CARE SERVICES**  
(Continued)

**87465**

**POLICY (Continued)**

- The licensee must contact the resident’s physician once a year so that he/she can (1) update staff on any new training that may be necessary to meet the resident’s needs and (2) review staff performance if necessary.

**PROCEDURE**

If a licensee/caregiver is assisting a resident with administering eye, ear or nose drops, ensure that the conditions in Regulation and Regulation Interpretations section 87465(a)(6)(C) are followed.

Ensure that the required documentation and training have been completed. The documentation from the physician regarding the resident’s condition and care must be kept in the resident’s file. The documentation regarding staff completion of training must be kept in the individual employee’s file.

Verify that the attending physician has reviewed the procedures for administering drops to specified residents on an annual basis, and has updated the procedures as necessary.

(a)(6)(D)

**POLICY**

No exception is necessary in order to crush a resident’s medication to enhance swallowing or taste.

**Conditions under which a resident’s medication may be crushed:**

1. To enhance swallowing or taste, but never to disguise or “slip” it to a resident without his/her knowledge.
2. If the resident is unable to take the medication, not if the resident is unwilling to take it. Residents have a personal right to refuse medication, except for minors and other clients for whom a guardian, conservator or other legal authority has been appointed who has authority over medical decisions. See Regulation section 87468(a)(16).

**If medication is to be crushed, the following documentation must be put in the resident’s file:**

1. A physician’s order that indicates the need for a specified medication to be crushed and grants permission to crush it. The order must include:
  - a. The dosage amount; and
  - b. Instructions indicating when and how often the medication will be given.

**POLICY (Continued)**

2. The facility administrator’s verification of a consultation with a pharmacist or treating physician, which was provided either orally or in writing by that pharmacist/physician. The following information must be included in that documentation:
  - a. The name of the pharmacist/treating physician, the name of the business, and the date of the conversation;
  - b. A statement that the medication can be safely crushed without losing potency;
  - c. Identification of foods and liquids that can be mixed with the medication;  
and
  - d. Instructions for crushing and mixing medication.
3. A consent form that gives authorization for medication(s) to be crushed, signed by one of the following:
  - a. The resident if he/she is not conserved. In this case, an acceptable signature would be whatever constitutes the resident’s signature on the admission agreement, even if that is a squiggle or an X. If the resident’s “signature” is an illegible mark such as a squiggle or an X, a witness must sign below the mark to verify that the resident made the mark. The witness cannot be the licensee or an employee of the facility.
  - b. The resident’s conservator when the conservator has the authority to make decisions on such issues.

**PROCEDURE**

Review the resident’s file for the following documentation [see Regulation Interpretations section 87465(a)(6)(D) above for the specific information required for each item below]:

1. A physician’s order that allows medication to be crushed and specifies what medication can be crushed;
2. The facility administrator’s verification of a consultation with a pharmacist or treating physician, which was provided either orally or in writing by that pharmacist or physician; and
3. A consent form that gives authorization for medication(s) to be crushed.

**87465 INCIDENTAL MEDICAL AND DENTAL CARE SERVICES**  
(Continued)

**87465**

(a)(7)

**PROCEDURE**

See Regulation Section and Regulation Interpretations section 87465(c)(3) regarding pro re nata (PRN) medications (which are administered “as needed”) for dosage record requirements when PRN medications are found in the facility.

(a)(9)

**POLICY**

The first aid kit may contain other first aid items not specified in the first aid manual, such as ipecac syrup for use in poisoning cases. However, care staff must be reminded that antidotes for poisoning cannot be used without the recommendation of the local poison information center or hospital, or a physician.

(b) and (c)

**POLICY**

If the resident can determine and communicate his/her need for a prescription or nonprescription PRN medication, or can communicate his/her symptoms clearly even though he/she is unable to determine his/her own need for a nonprescription PRN medication, the following applies:

1. A licensee may obtain written instructions from the resident’s treating physician for a nonprescription PRN medication before a resident shows a need for such a medication. These instructions must include specific precautions against mixing medications and meet the requirements below.
2. The physician’s business stationery may be substituted for the required prescription blank for every prescription and nonprescription PRN medication.
3. A licensee may obtain faxed instructions from the resident’s physician when there are no written physician instructions on file. The fax must be on the physician’s business stationery or prescription blank.

The physician’s business stationery, or fax of the business stationery or prescription blank, must contain the following:

- a. The physician’s signature and date;
- b. All documentation required by Regulation sections 87465(c)(1) and (e); and
- c. Specific information on how and when to take the prescription and nonprescription PRN medications in conjunction with the other medication(s) the resident is already taking.

**87465      INCIDENTAL MEDICAL AND DENTAL CARE SERVICES**  
(Continued)

**87465**

**PROCEDURE**

Review the resident’s file to see if the physician has stated in writing that the resident is able to determine and communicate his/her need for a prescription or nonprescription PRN medication, as specified in Regulation [Section 87465\(b\)](#); or is unable to determine his/her own need for a nonprescription PRN medication, but can communicate his/her symptoms clearly, as specified in Regulation [Section 87465\(c\)](#).

Also review the resident’s file to ensure that the physician’s written instructions, on a prescription blank or on the physician’s business stationery, contain all of the information required in Regulation [sections 87465\(c\)\(1\) and \(e\)](#), including the physician’s signature and date. In addition, ensure that the physician’s instructions include precautions, if any, on the interaction of the prescription and nonprescription PRN medication(s) with the other medication(s) the resident is already taking.

(e) **POLICY**

Nonprescription medications should have the resident’s name on the container, without obscuring the manufacturer’s label or instructions for use of the medication.

Containers of medication samples provided by the resident’s physician should contain all of the information required by this section except the prescription number and pharmacy name.

(f)(3) **POLICY**

The Emergency Disaster Plan (LIC 610E) is available for this purpose.

The licensee should obtain consent forms to permit the authorization of medical care.

(h)(1) **POLICY**

Refer to Regulation Interpretations [section 87465\(e\)](#) concerning prescription blanks.

(h)(1)(A) **POLICY**

Residents may use private refrigerators for preservation of their medicines unless Regulation [sections 87465\(h\)\(1\)\(B\) or \(C\)](#) or [section 87705\(a\)\(5\)\(D\)](#) are applicable to the situation in question.

Centrally stored medications kept in the refrigerator must be in a locked receptacle, drawer or container separate from food items.

(h)(1)(C) and (h)(2) **POLICY**

When there is a dispute with a licensee/administrator over whether medications should be centrally stored, the licensing agency must contact a physician for a third opinion. In most residential care facilities for the elderly, the “condition or habits of other persons” in care will require that medications be centrally stored.

**87465      INCIDENTAL MEDICAL AND DENTAL CARE SERVICES**  
(Continued)

**87465**

**PROCEDURE**

See Regulation [section 87705\(f\)\(2\)](#), Care of Persons with Dementia, for central storage requirements for prescription and nonprescription medications in facilities that accept residents diagnosed with dementia.

Document on the Facility Evaluation Report (LIC 809) the reasons for determining that medications must be centrally stored.

(h)(3)

**PROCEDURE**

For facilities with a capacity of more than 20 residents, review a random sample of 10 percent of the residents' medication containers. If the capacity is fewer than 20, review all of the residents' medications. Compare the information on the containers with the information on the records required by Regulation [section 87465\(h\)\(6\)](#).

See Regulation [sections 87465\(e\)\(1\) through \(4\)](#) for labeling requirements of PRN ("as-needed") prescription and nonprescription (over-the-counter) medications.

Inspect medication containers for the expiration date, which may be typed on the prescription label or on the manufacturer's label, or stamped on the bottom crimp of a tube. If the medication has expired, it must be destroyed under Regulation [section 87465\(i\)](#). [Please also see Regulation Interpretations [section 87465\(i\)](#).]

(h)(4)

**PROCEDURE**

Check medication labels for storage instructions such as temperature requirements. If not indicated, medications should be stored at room temperature, between 59 degrees Fahrenheit (F) and 86 degrees F. If the label indicates "refrigerate or store below 45 degrees F," the medication should be stored in a refrigerator between 36 degrees F and 46 degrees F. If the medication is not stored at the appropriate temperature, cite this section.

Check to ensure that all containers have secure caps or lids. Paper envelopes are not acceptable storage containers.

Check labels to determine if someone other than the issuing pharmacist has altered the prescription container label. If the physician changes the frequency or amount of the dosage, the facility should have a system for flagging or noting the change without altering the label. The following procedure is recommended:

1. Designated facility staff would mark the container without covering the original label. Such a mark would be made with colored press-on dots, colored tape, or other material that would stick to the container and alert staff to a change in the physician's instructions. These changes would have been recorded in a notebook,

**87465      INCIDENTAL MEDICAL AND DENTAL CARE SERVICES**  
(Continued)

**87465**

card file, cardex, or other written form by a facility staff person after contact with the physician. The contact with the physician may be by telephone or in person.

2. The physician prepares a new prescription request or calls the pharmacy so that the container can be properly labeled when the prescription is refilled.

(h)(5)

**POLICY**

When a resident leaves a facility for a short period of time during which only one dose of medication(s) is/are needed, the facility may give the medication(s) to the resident in an envelope (or similar container) labeled with the facility's name and address, the resident's name, the name of the medication(s), and the instructions for administering the dose. If the resident is to be gone for more than one dosage period, the facility may:

1. Give the full prescription container to the resident; or
2. Have the pharmacy fill a separate prescription, or separate the prescription into two bottles.
3. Have the resident's family obtain a separate supply of the medication for use when the resident visits with the family.

If it is not safe to give the medication to the resident, it should be entrusted to the person who is escorting the resident off the facility premises.

If medications are being sent off the facility premises with residents, check the Physician's Report (LIC 602 or 602A) to ensure that the medications are given only to residents whose physicians have indicated that they may control their own medications.

See Regulation Interpretations section 87629, Injections, regarding setting up injectible medications in advance.

Each resident's medication shall be stored in its originally received container. No medications shall be transferred between containers. Licensees are encouraged to use the following guidelines when pre-pouring medications:

- Medications shall not be set-up more than 24 hours in advance (one-day only).  
Clean, sanitary conditions. (i.e. containers, counting trays, pill cutters, pill crushers and storage/setup areas) should be maintained.
- Medications should be poured from the original container to the individual resident's cup/utensil to avoid touching or contaminating medication.
- The name of the resident should be on each cup/utensil used in the distribution of medications.
- Written procedures for situations such as spillage, contamination, assisting with liquid medication, interactions of medications, etc. are strongly encouraged.



**87465      INCIDENTAL MEDICAL AND DENTAL CARE SERVICES**  
(Continued)

**87465**

(h)(6)      **PROCEDURE**

See Regulation **s**ection 87465(d)(3) for dosage record requirements when PRN (“as needed”) prescription or nonprescription medications are found in the facility.

(h)(6)(A)      **POLICY**

Nonprescription medications should have the resident’s name on the container, without obscuring the manufacturer’s label or the instructions for the use of the medication.

(h)(6)(E)      **POLICY**

Containers of medication samples provided by the resident’s physician should contain all information required by this section except the prescription number and the pharmacy name.

(h)(6)(F)      **POLICY**

The Centrally Stored Medication and Destruction Record (LIC 622) is available to licensees for maintaining this information.

Discontinued resident medications must be destroyed. However, a discontinued medication may be saved if the resident’s physician orders the medication to be temporarily discontinued and resumed at a later date.

Ensure that the licensee has documentation from the resident’s physician verifying that the physician has ordered the medication to be temporarily discontinued and resumed at a later date.

**87468      PERSONAL RIGHTS**

**87468**

(a)      **POLICY**

There is no law or regulation guaranteeing residents the right to smoke in a facility. There is a state law (Labor Code Section 6404.5) that guarantees employees the right to a smoke-free working environment. Therefore, licensees cannot be cited on the basis of violating the personal rights of residents if they impose restrictions on residents’ smoking. Licensees are required to comply with Labor Code Section 6404.5 by providing their employees with a smoke-free environment, or be subject to state penalties.

Labor Code Section 6404.5 applies to most places of employment (including care facilities) with a total of more than five employees. It also applies to facilities with five or fewer employees (but allows smoking under certain conditions in certain locations).

**87468      PERSONAL RIGHTS (Continued)**

**87468**

**(a)(10)                                      POLICY**

Ombudsmen and advocacy representatives are allowed to visit privately with residents if the resident agrees to the visit.

House rules can be established regarding visiting hours, sign-in rules, visiting rooms, etc., but must apply to all visitors.

**(a)(14)                                      POLICY**

Licensees must provide a telephone on the premises for resident use. The licensee may require residents or their authorized representatives to reimburse the facility for long-distance calls.

Pay telephones, if they are accessible, meet the intent of Regulation section 87468(a)(14). In order for pay telephones to be considered accessible, the facility must provide residents with change to make local calls. This means the licensee is required to pay for local calls. The number of calls should not be limited unless the licensee has documentation to verify excessive use by residents.

The admission agreement should indicate if the licensee intends to collect reimbursement for long-distance phone calls. Reimbursement fees must be documented by bills and receipts in the resident's file.

**PROCEDURE**

Review the resident's file to ensure that this reimbursement is receipted and documented on the resident's Record of Client's/Resident's Safeguarded Cash Resources (LIC 405).

**(b)    POLICY**

The Personal Rights form (LIC 613C) meets this requirement.

**87469      ADVANCED HEALTH CARE DIRECTIVES, REQUESTS TO FOREGO      87469  
RESUSCITATIVE MEASURES, AND DO-NOT RESUSCITATE FORMS**

**(c)    POLICY**

Health and Safety Code section 1569.74(a) permits Residential Care Facilities for the Elderly that employ health care providers to establish policies to honor a request to forego resuscitative measures. This section of the code has been interpreted by legal to prohibit the licensee from honoring a DNR since they are NOT an employee of the facility.

However, if a corporation is the licensee, as opposed to an individual, a member of the corporation working at the facility can honor the DNR. This criteria applies even in situations where an individual is the corporation and works at the facility.

**ARTICLE 9. RESIDENT RECORDS**

**87506 RESIDENT RECORDS**

**87506**

(b) **PROCEDURE**

For information relative to waivers of other regulations for religious facilities, see Regulation and Regulation Interpretations section 87411(f).

(c)(1) **PROCEDURE**

Upon request, licensing agencies will give the Office of the State Long-Term Care Ombudsman and its representatives, including volunteers, access to any licensing records that are necessary to assist the Office in carrying out its responsibilities. This includes confidential records EXCEPT:

1. Bureau of Criminal Identification Division reports.
2. Information subject to attorney-client privilege.
3. Complainants' names and identifying information.
4. Information that is part of an investigation still in progress.

In addition, licensees of facilities and their representatives must release residents' records for examination or copying to the Office of the State Long-Term Care Ombudsman and its representatives, including volunteers, under the following conditions pursuant to the Older Americans Act of 1965, Section 712(b):

- the representative has the permission of the resident or the legal representative of the resident; OR
- the resident is unable to consent to the review and has no legal representative; OR
- access to the records as is necessary to investigate a complaint if:
  - a legal guardian of the resident refuses to give the permission;
  - a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and
  - the representative obtains the approval of the Ombudsman.

(a) **POLICY**

The Admission Agreement Guide (LIC 604) is a sample of an appropriate agreement and is available to licensees.

**PROCEDURE**

Review the signed admission agreement for compliance with these requirements.

(c) **POLICY**

Admission agreements must clearly indicate the amount of money that the resident will be paying.

[**NOTE:** For information on transportation costs and admission agreements, see Regulation Interpretations section 87465(a)(2), Incidental Medical and Dental Care Services.]

Supplementary Security Income/State Supplementary Payment Recipients:

Residents who are Supplementary Security Income/State Supplementary Payment recipients must be provided with all basic services for the established Supplementary Security Income/State Supplementary Payment rate. They cannot be assessed additional charges for basic services except for a private room when a double room is made available and for special food services or products. These additional charges, if desired by the resident, must be documented in the admission agreement.

Private Pay:

Licensees can charge private pay residents for basic and optional services in one of three ways:

1. A fixed amount for all services to be provided. The resident is informed on the admission agreement of all the services to be provided and the monthly fee for the services. The resident pays the fixed monthly fee regardless of whether or not each and every service is used. The facility must meet all of the resident's basic services needs for the fixed monthly fee. The licensee may (but does not have to) reduce the fixed fee because of services not used by the resident but may not **increase** the fee.
2. A fee for each and every service to be provided. The resident selects and pays for only those services that he or she needs and wants, and does **not** pay for services that he or she does **not** need or want (e.g., daily breakfast). The list of services is part of the admission agreement. Basic services (as identified in regulations) must be delineated as basic services, and any optional services (such as cosmetology and barbering) must be delineated as optional services.

**POLICY (continued)**

3. A combination of (1) and (2) above. The licensee provides the resident with two separate lists of services. One list includes those services that will be provided for a fixed fee. The other list includes additional services with an individual fee for each service, such as additional baths above what the licensee offers for the fixed fee. Whether included in the fixed fee list or additional services list, basic services must be delineated as basic services, and any optional services must be delineated as optional services.

**(c) POLICY**

The resident may choose which services he or she wants. (Optional services and their fees may also be posted elsewhere in the facility, accessible to residents.) The monthly payment is a total of the fixed fee and the fees for the additional services selected by the resident.

In all cases the admission agreement must clearly indicate what the charges are and the services provided for the charges. No fee may be charged that is not clearly stated in the admission agreement. The agreement would need to be revised if the resident's needs (as documented by a reappraisal) and/or use of services increased (or decreased). Any increase in charges because of increased needs may be implemented immediately, as long as the agreement includes a notice that charges will increase if/when the resident's need for services increases, and as long as at least 30 days have passed since the signing of the admission agreement.

Other increases in charges, such as cost-of-living increases, cannot be implemented immediately, but require a 30-day notice.

Even in those cases in which the resident is unable to pay for the increased service, the licensee is responsible for meeting the resident's needs and remains responsible until the resident is relocated.

**(c)(3) POLICY**

There is no prohibition against charging community and assessment fees to private pay residents if the resident agrees in the Admission Agreement. Previously statute (and regulations) provided no specific guidelines regarding the charging of this type of fee (designated by different names). However, effective January 1, 2003, Senate Bill 1898 will provide guidelines.



**87508      REGISTER OF RESIDENTS**

**87508**

**PROCEDURE**

When inspecting facility records, review the register to ensure that this requirement is being met. A review of 10 percent or a minimum of 10 percent of the residents' record files should be checked to verify the validity of the register. (If the review reveals any substantial problems, more records should be sampled.) If the capacity of the facility is fewer than ten residents, review 100 percent of the register against the residents' files.

**ARTICLE 10. FOOD SERVICES**

**87555      GENERAL FOOD SERVICE REQUIREMENTS**

**87555**

(a) **PROCEDURE**

In evaluating the quality and quantity of food, use the USDA Basic Food Group Plan – Daily Food Guide.

If it is questionable whether a facility meets this requirement, document on the Facility Evaluation Report (LIC 809) what food is available and discuss with the licensing supervisor the need for consultation from a nutritionist. If there are documented sanitation problems, discuss with the licensing supervisor the need for consultation from a local sanitarian. See Regulation section 87303.

(b)(2) **POLICY**

If a resident is away from the facility during regularly scheduled meal times (e.g., to attend a program or class, etc.), the licensee must provide the resident with a “brown bag” meal that meets the requirements of Regulation section 87555(a), OR enough money to buy a meal that meets the requirements of Regulation section 87555(a). These arrangements must be clearly documented in the admission agreement. The admission agreement should indicate:

1. The day(s) of the week and times when the resident will or will not be dining at the facility.
2. Estimated average cost of facility meals.
3. That either a “brown bag” meal or money will be provided.

**PROCEDURE**

Review the admission agreement and interview residents to ensure that residents who dine away from the facility and have prepaid meal services are reimbursed by either being provided (1) a “brown bag” meal OR (2) money equivalent to the cost of a facility meal. Review the Record of Client’s/Resident’s Safeguarded Cash Resources (LIC 405) to ensure that residents are not charged twice.

(b)(3) **POLICY**

If desired, residents may purchase snacks from a store or facility vending machines with their own money. This does not relieve the licensee of the responsibility to make nutritious snacks available at the basic rate.

(b)(7) **PROCEDURE**

Review menus, food supplies, Pre-placement Appraisal Information forms (LIC 603), Appraisal/Needs and Services Plans (LIC 625), and/or Physician’s Reports (LIC 602 or 602A) to ensure that the food inventory is consistent with the written menu and that the menu provides for residents who have a medically prescribed diet.

(b)(8) **PROCEDURE**

Check canned goods to ensure that they are free from swollen or bulged ends, evidence of product leakage, sharp creases to the body panel, damaged seams and rims, rust spots that indicate perforation is about to occur, flood or fire damage, or major dents on side panels that compromise structural integrity. Generally, minor rust that can be easily removed by buffing, and minor damage or dents to the side panels do not compromise the structural integrity of cans. If cans with dents on side panels can be stacked, their structural integrity generally has not been compromised. [This procedure was developed in collaboration with the California Department of Health Services, Food and Drug Branch, Food Safety Inspection Unit, and based on *Guidelines for Evaluation and Disposition of Damaged Food Containers: Cans and Glass* (Bulletin 38-L 4<sup>th</sup> Edition), 1999, published by Food Products Association, Washington, DF. Pp 47-64.]

(b)(12) **POLICY**

The official stamp of approval will suffice as written evidence. The official state stamp is a “C” and a three digit number (e.g., C 123). The federal stamp is “USDA.”





**POLICY(Continued)**

**NOTE:** “Regular” is purposely not defined because consultation needs may vary from facility to facility depending on such factors as facility size, the number of meals served per day, the complexity of the residents’ dietary needs, etc. Therefore, this section allows the analyst to require consultation when necessary (e.g., meals not nutritionally balanced, no menu variety, specific dietary needs not met, etc.).

The number of hours and the frequency of consultations will be based on the size of the facility, the qualifications of facility personnel, the type of population, etc.

**PROCEDURE**

Review facility menus and document the need for a consultation on the Facility Evaluation Report (LIC 809) or the Complaint Investigation Report (LIC 9099) as appropriate.

(b)(23)

**POLICY**

Perishable foods are foods that spoil readily without refrigeration, drying or some other method of food preservation. Examples include but are not limited to: milk and other dairy products; meat; fish; poultry; eggs; fresh fruits and vegetables; bread and other baked products; all prepared items; and leftovers such as thawed frozen foods and opened canned foods. Perishables must be stored in covered containers at 40 degrees F or less.

If it is suspected that the temperature of a refrigerator exceeds 40 degrees F (e.g., items in the refrigerator are not cold to the touch, cheese or butter is softened, etc.), use a holding thermometer to check the temperature.

(b)(27)

**PROCEDURE**

Check the following:

1. Cleanliness of refrigerators. Frost accumulation is one sign that a refrigerator has been inadequately cleaned.
2. Cleanliness of floors and walls.
3. Cleanliness of cabinets and counters.
4. Cleanliness of large and small appliances.

**PROCEDURE(Continued)**

5. Dry storage area. Check for cracks and crevices that would allow entry of rodents, and check for damaged screens or windows that would allow entry of insects. Look under items stored on the floor and behind food on shelves for evidence of infestation. Check for rodent and insect infestation by opening all of the containers and storage bins. Food should not be stored directly on the floor.
6. Look for contamination by bugs, worms or weevils; and for rat and mice droppings, gnawings and tracks.
7. Although sanitation inspections are not routinely requested for every facility, if there is a serious question regarding such matters as proper food preparation and storage, sanitizing of dishes, insect control or general sanitation, discuss with the licensing supervisor the need for such an inspection. Refer to Regulation and Regulation Interpretations Section 87303.

(b)(31)(B)

**POLICY**

Low-energy dishwashers not reaching 165 degrees F are acceptable if they automatically dispense a sanitizing agent.

**PROCEDURE**

At the beginning of the visit, place a holding thermometer in the automatic dishwasher. When the full cycle has completed, check the thermometer to ensure that the temperature meets this requirement.

(c)

**POLICY**

Licensing agencies must document specific food deficiencies prior to requiring facilities to provide written information regarding food purchases.

**PROCEDURE**

When a deficiency in food service is identified, document findings on the Facility Evaluation Report (LIC 809) and, as necessary, on the Detail Supportive Information (LIC 812).

**ARTICLE 11.**

**HEALTH –RELATED SERVICES AND CONDITIONS**

**87608      POSTURAL SUPPORTS**

**87608**

(a) **POLICY**

An increasing number of residents in residential care facilities for the elderly are using privately paid personal assistants (also referred to as “private caregivers”). For information on privately paid personal assistants, please see Regulation Interpretation section 87411(a) (Personnel Requirements).

(a)(1) **POLICY**

Soft ties mean soft cloth (e.g., muslin sheeting) that does not cause abrasion, that does not restrict blood circulation, and that can be easily removed in the event of an emergency. Under no circumstances are postural supports to include tying, depriving or limiting the use of a resident’s hands or feet.

(a)(3) **POLICY**

1. Persons may be placed in postural supports only upon the written order of a physician and the written approval of the placement agency (if one is involved) or the responsible person (if no placement agency is involved). The physician’s order is not to exceed 90 days without a reorder, which must be based upon observation of the resident.
2. Persons in postural supports must be observed at least every 30 minutes, or more often as needed, by a staff person responsible for the resident’s care or by a person in a higher level of supervision. Observations must be recorded (e.g., by use of a card file, list, log, etc.). This documentation must be kept on file at the facility.

At change of duty (shift change, etc.), incoming responsible staff must acknowledge in writing (on a card file, list, log, or in the resident’s file) that the resident is in a postural support. This is necessary to ensure that incoming responsible staff are aware of the resident’s situation. A notation must be made in the resident’s record whenever a postural support is applied to and/or removed from the resident.

(a)(4) **POLICY**

No form of postural support is permitted without an appropriate fire clearance from the State Fire Marshal. Persons who use postural supports are considered nonambulatory for the purpose of securing an appropriate fire clearance. On the Fire Safety Inspection Request (STD 850), the facility’s intent to use postural supports should be noted in the Restraint or Special Conditions section.

**87608 POSTURAL SUPPORTS (Continued)**

**87608**

(a)(4) **PROCEDURE (continued)**

Note that the facility intends to use postural supports in the Restraint or Special Conditions section of the STD 850. (See Regulation sections 87203 and 87202.)

(a)(5) **POLICY**

Restraints include the use of prone or supine containment as a method of controlling a resident's behavior. Prone or supine containment is a restraint procedure in which a resident is contained in a prone or supine (face down or face up) position on the floor or on a bed by staff who apply their weight to the resident's legs, arms, buttocks and shoulders.

The prohibition against prone or supine containment is not intended to preclude the use of reasonable force in emergency situations in which an assaultive resident threatens death or serious injury to self or others. Any restraint should be considered an unusual incident that must be reported in writing within seven days as required by Regulation section 87211(a)(1).

The unusual incident report must include a description of the resident's assaultive behavior, the containment method used and its duration, and staff involved. The need for the use of prone or supine containment is evidence that the resident in question is not appropriate for continued placement in a residential care facility for the elderly.

For those facilities in which behavioral restraints have been allowed in the past, the licensing agency will reevaluate the exceptions at the time of the required annual visit and/or the random sample visit or when the exception expires, whichever is earlier, and determine if the exception meets the criteria specified in this policy. When a facility is using behavioral restraints and is not complying with this policy, the licensing agency will advise the licensee that the restraints must be discontinued or the resident(s) relocated.

**87609 ALLOWABLE HEALTH CONDITIONS AND THE USE OF HOME HEALTH AGENCIES**

**87609**

(a) **POLICY**

A licensee of a residential care facility for the elderly shall be permitted to accept or retain persons who have a health condition(s) that requires incidental medical services. This includes accepting or retaining a resident who tests positive for the Hepatitis C virus. No written request for an exception is required for this health condition.

**87609    ALLOWABLE HEALTH CONDITIONS AND THE USE OF HOME      87609**  
**HEALTH AGENCIES (Continued)**

(a) **POLICY (Continued)**

Hepatitis C is an infection caused by a virus that attacks the liver and leads to inflammation. Chronic Hepatitis C can cause cirrhosis, liver failure, and liver cancer. Most people infected with the Hepatitis C virus have no symptoms. Early symptoms can be a mild fever, headache, muscle aches, fatigue, loss of appetite, nausea, vomiting and diarrhea. Later symptoms may include dark coffee-colored urine, clay-colored stools, abdominal pain and yellowing of the skin and/or whites of the eyes.

Facility personnel shall at all times be sufficient in numbers, and competent to provide the services necessary to meet the resident's needs and the needs of other residents in the facility. The licensee must ensure that prior to providing care for a resident who has the Hepatitis C virus, direct care staff are trained to meet health and safety requirements and any other procedures recommended by the appropriately skilled professional for the protection of the resident who has the virus, and other residents and staff. As required, all staff who assist residents with personal activities of daily living shall receive training on universal precautions as specified in California Code of Regulations, title 22, section 87411(c)(3)(B). The universal precaution basic infection control guidelines are described in California Code of Regulations, title 22, section 87101(u)(1), under definitions. The licensee must also meet the requirements in California Code of Regulations, title 22, section 87611(b) – (f), General Requirements for Allowable Health Conditions.

**PROCEDURE**

Direct care staff must receive training to safely meet the needs of a resident diagnosed with the Hepatitis C virus and to maintain a safe environment for everyone in the facility. Direct care staff must use universal precautions, including regular hand washing after coming into contact with another person's body fluids (mucous, saliva, urine, etc.) and including the use of gloves when handling blood or body fluids that contain blood. The Hepatitis C virus is transmitted by blood, shared needles, accidental needle sticks, and sexual contact (in rare cases). If a resident has the Hepatitis C virus, household equipment such as toothbrushes and razors must not be shared. Also, items that could become contaminated with blood must not be shared, including cuticle scissors or tools used for a pedicure or manicure. Cuts, open sores, or other breaks in the skin must be covered to prevent the risk of blood exposure to others. Care must be given if the resident has canker or cold sores and right after that individual flosses. In addition, a bleeding hemorrhoid would be a risk to others if a resident has a Hepatitis C virus. The Hepatitis C virus is not spread by food or water or casual contact, such as shaking hands or sharing a work space or bathroom facility.

Hepatitis C is not treated unless it becomes chronic. A physician will determine what course of medical intervention is necessary, if treatment is needed. Chronic Hepatitis C



**(a)(4)      POLICY (continued)**

Sometimes a resident may be known to be **colonized** but not infected with an antibiotic-resistant bacterium. Colonization without infection is not prohibited in facilities, and so no exception is required to retain a resident who is colonized without infection. However, colonized residents can transmit infection to others, and, therefore, universal precautions should be practiced with any resident who is known to be colonized with an antibiotic-resistant bacterium.

An exception request for a resident with an antibiotic-resistant infection should include the following:

- A statement from the resident’s physician that the infection is not a risk to other residents.
- A plan to monitor the resident’s ongoing ability to care for his/her own condition by complying with the instructions of the appropriately skilled professional who is managing the client’s care.
- If applicable, documentation from an appropriately skilled professional stating what aspects of care will be delegated to facility staff responsible for providing the care and that the appropriately skilled professional will train those staff persons prior to delegating care.
- A statement from licensee ensuring that an appropriately skilled professional assesses the infection and evaluates the treatment at intervals set by the physician or an appropriately skilled professional designated by the physician.
- A statement from licensee ensuring that prior to providing care, staff are trained in and follow Universal Precautions and any other procedures recommended by the appropriately skilled professional for the protection of the resident who has the infection, other residents and staff.
- A statement from the licensee ensuring all aspects of care performed in the facility by the appropriately skilled professional and facility staff are documented in the resident’s file.



**87615      PROHIBITED HEALTH CONDITIONS (Continued)**

**87615**

**POLICY (Continued)**

In addition, the following factors should also be considered:

- Does the facility have a private bedroom and bathroom for the resident? (While unlikely, if two residents are infected with the same bacterium, they can share a bedroom and bathroom.)
- Does the facility have sufficient staff to render the proper care for a resident with such an infection?
- Does the infected resident have good hygiene practices that would reduce the opportunities for transmission of the bacteria?
- Does the facility have residents who are at high risk if the infection should be transmitted to them, e.g., residents who have recently had surgery, or have a catheter, surgical drain or open wound, or whose immune systems are compromised in any other way?

**87617      DEPARTMENTAL REVIEW OF HEALTH CONDITIONS**

**87617**

(a) **POLICY**

Bedridden status outside of hospice [as defined in Regulation Section 87455(d)(1)] that exceeds 14 days is among the health-related conditions that require review by licensing staff to determine if the resident will be allowed to remain in the facility. See Regulation Interpretation Section 87455 for detailed information.

**PROCEDURE**

See Regulation Interpretation section 87455 for detailed instructions.

**87618      OXYGEN ADMINISTRATION – GAS AND LIQUID**

**87618**

(b)(3)(F) **POLICY**

The following are general conditions that must be considered when oxygen tubing exceeds 7 feet in length:

1. The plastic tubing from the nasal canula (mask) to the oxygen source must be long enough to allow the resident movement within his/her room but cannot constitute a hazard to the resident or others. Things that may impact resident's safety include:
  - Whether the resident is in a private or shared bedroom

**POLICY(Continued)**

- Whether the physical layout of the facility is appropriate for longer tubing so that no one in the facility will trip or accidentally disconnect the tubing
  - Whether there are residents in the facility with physical disabilities (e.g., who have difficulty seeing and/or trouble walking/moving) for whom long tubing may pose a hazard
  - Whether the resident with lengthy oxygen tubing uses a portable source of oxygen outside of his/her room
2. An appropriately skilled professional or vendor must check the oxygen tubing to make sure it will operate safely and properly

(c)(1)

**POLICY**

Liquid oxygen use may be permitted for high-functioning residents who might otherwise be restricted in their activities by the use of heavy, cumbersome compressed oxygen cylinders. The licensee must request an exception for each resident wishing to use liquid oxygen. The liquid oxygen cannot be allowed on the premises until the exception has been approved.

Exceptions should be reviewed on a case by case basis and granted only for residents who are documented to be physically and mentally capable of operating the storage unit, transferring oxygen into the portable unit, and self-administering oxygen without assistance from staff or an appropriately skilled professional. Specific conditions should be developed for each exception. The following are general conditions that should be included in the exceptions approving the use of liquid oxygen:

- Only the vendor of the oxygen may fill the storage unit - Filling must take place off the facility premises.
- Documentation that the resident was trained in the operation of the equipment by the vendor must be kept in the resident's file.
- The liquid oxygen containers must be stored, handled and maintained in accordance with the written instructions from the vendor and any additional requirements imposed by the local fire authority.
- The license must comply with the provisions of Regulation section 87611 and Regulation sections 87618(b)(1) and (b)(3) through (b)(5).
- The licensee must also obtain and maintain written permission from the fire prevention authority having jurisdiction to allow liquid oxygen in the facility.

**87619      INTERMITTENT POSITIVE PRESSURE BREATHING (IPPB)      87619**  
**MACHINE**

- (a) In addition to the Intermittent Positive Pressure Breathing Machine, the Continuous Positive Air Pressure and Bi-Level Airway Pressure machines are permitted as long as the requirements of this section and Regulation section 87611, General Requirements for Allowable Health Conditions, are met. Continuous Positive Air Pressure and Bi-Level Airway Pressure machines are used to provide long-term therapy for sleep apnea.

**87628      DIABETES      87628**  
**POLICY**

See Regulation Interpretation section 87629

**87629      INJECTIONS      87629**

(a) **POLICY**

For the purposes of this section, the term “appropriately skilled professional” only includes persons licensed to administer medications, including physicians, registered nurses, licensed vocational nurses, and under some circumstances psychiatric technicians.

**PROCEDURE**

Suspected violations of this section should be reported to the appropriate licensing board. Consult with the licensing program manager prior to making this referral.

If unlicensed and/or unauthorized persons are administering injections, issue a notice of deficiency, citing Regulation sections 87629(a) and (b)(1) and Regulation section 87465(a)(6).

(b)(1) **POLICY**

Only the resident or an appropriately skilled professional can mix the medication or fill the syringe with the prescribed dose (“draw up” the medication). An appropriately skilled professional CANNOT administer medication/insulin that has been “drawn up” by another appropriately skilled professional.

**PROCEDURE**

See Regulation section 87101(a)(9) (definition of “Appropriately Skilled Professional”) and Regulation Interpretation section 87629(a).

(b)(2) **POLICY**

Insulin and other injectable medications must be kept in their original containers until the prescribed single dose is measured into an individual syringe for immediate injection by the resident or an appropriately skilled professional.

**POLICY (Continued)**

Prefilled by a Registered Nurse - Insulin Only

*In the case of insulin only*, an exception can be granted to section 87465(h)(5), requiring that medication must be kept in its original container, if the following conditions are met:

1. The resident's physician has certified in writing that the resident's need for insulin is stable; that the resident is cognitively and physically competent to self-inject insulin; and that the resident is not able to fill his/her own syringe due to blindness, tremors, arthritis, etc.
2. The insulin is pre-drawn into individual syringes at the facility *only by a registered nurse* for later self-administration by the resident.
3. The insulin is pre-drawn into individual syringes by the registered nurse *no more than seven days in advance* of self-administration by the resident. The storage time is only seven days to decrease the risks of labeling errors, destabilization of the insulin, and bacterial contamination.
4. The pre-drawn syringes are individually labeled and properly stored.
5. Training on diabetes and insulin is provided to the facility staff and any other caregivers working in the facility.

Prefilled by the Pharmacy or the Manufacturer

In addition, insulin and other injectable medications may be prefilled by the pharmacy or the manufacturer in individual syringes for later self-administration by the resident. In those cases, the following applies regarding how far in advance doses of insulin and other injectable medications can be prefilled:

- **If prefilled by the pharmacy:** Insulin and other injectable medications may be prefilled and prepackaged by a pharmacy in individual syringes according to the manufacturer's specifications (which can vary, depending on the type or brand of insulin or other injectable medication being used). Instructions for use and the expiration date are shown on the pharmacy label.
- **If prefilled by the manufacturer:** Insulin and other injectable medications that are supplied to the pharmacy by the manufacturer as prefilled and prepackaged individual syringes should be used according to the pharmacy label. The expiration date can be found on the manufacturer's box and/or the pharmacy label.

**PROCEDURE**

When evaluating the storage and handling of insulin or other injectable medications, check the container label(s) to make sure that individual syringes of injectable medications have not been set up in advance by anyone other than a pharmacist or the manufacturer (or, in the case of insulin only, a registered nurse).

**POLICY****Hospice Care Waivers and Total Care Exception Requests**

Health and Safety Code section 1569.73 requires facilities to obtain a Hospice Care Waiver from the California Department of Social Services if they wish to retain clients receiving hospice care services. Residents receiving hospice care services may eventually require “total care,” which is a prohibited health condition as outlined in California Code of Regulation (CCR), title 22, section 87615(a)(5). Total care is defined as a condition where residents depend on others to perform all of their activities of daily living, see (CCR) title 22, section 87459 Functional Capabilities.

A licensee must request a total care exception to allow a resident to be retained in the Residential Care Facility for the Elderly (RCFE) if the resident’s condition requires total care. The requirements for requesting this total care exception are found in California Code of Regulation (CCR), title 22, section 87616.

**PROCEDURE**

Currently, a licensee who accepts/retains a resident who is receiving hospice care services has to have been granted a hospice care waiver. Then, if a total care need arises for the resident receiving hospice services, the licensee has to apply for an exception for the total care prohibited health condition, which includes the conditions outlined in section 87616. To streamline and expedite the total care exception process in these cases, the licensee has the option to submit, along with a written request to the Department for a hospice care waiver, a description that outlines most of the licensee’s plan to ensure the provision of total care for residents receiving hospice care services who may later require total care.

The optional total care plan component of the hospice care waiver request must include the licensee’s plan for ensuring that current total care residents’ health related needs can be met, or provisions made for them to be met by the licensee [required by 87616(b)(2)]. The plan must also address how it will minimize this impact on the other residents [required by 87616(b)(3)].

If the Department then grants approval of the hospice care waiver, it will already have on file two of the provisions [required by 87616(b)(2) and (3)] for total care required for any future exception requests submitted by the licensee.

The total care exception requirements of section 87616 would be met for a current resident if a granted hospice care waiver included a reference to the hospice care waiver, which provided the information required by 87616(b)(2) and (3) and the information in #4. below. For residents whose need for total care occurs after the hospice care waiver is accepted, if the waiver covers the provisions of 87616(b)(2) and (3), only the information in #4. below would be required for that resident’s total care exception.

**PROCEDURE (continued)**

This process is as follows:

1. In accordance with Code of Regulation (CCR), title 22, section 87632(d)(2), the licensee is required to submit to the Department written notification that hospice care services have been initiated for a terminally ill resident. The notice shall include the resident's name and date of admission to the RCFE and the name and address of the hospice agency and it shall be submitted to the Department within five working days of the initiation of hospice services for that resident.
2. If the licensee believes the resident receiving hospice services needs or will likely need total care, the licensee can state in the notice in "1" above that he or she is also requesting an exception request for total care for this particular resident in accordance with Code of Regulation (CCR), title 22, section 87616.
3. Two of the requirements for a section 87616 total care exception request are: 87616(b)(2), the licensee's plan for ensuring the residents' health related needs can be met by the facility and 87616(b)(3) the plan for minimizing the impact on other residents. These two requirements will have already been addressed with the licensee's submission of the hospice care waiver request and the optional provision of the total care plan along with it. Therefore, these components would not need to be submitted as part of the exception request, as long as the licensee's hospice waiver request has already fully addressed the unique needs of the specific resident in question.
4. The third requirement [at 87616(b)(1)] for a section 87616 total care exception request is for the licensee to submit to the Department the resident's current health condition, including updated medical reports, and other documentation of the current health, prognosis, and expected duration of the condition. In cases where the requirements of 87616(b)(2) and (3) total care services component have already been approved as part of the Hospice Waiver, rather than submitting the information required by 87616(b)(1), (2) and (3), the licensee may propose in the exception request that:
  - A. The individual resident's hospice care plan [section 87633(b)], which is maintained at the facility, is a reasonable variance of section 87616(b)(1), and;
  - B. The granted Hospice Care Waiver is a reasonable variance of the requirements of section 877616(b)(2) and (3).

If the exception is granted, the individual hospice care plan would not need to be submitted to the Department, but would instead be retained in the resident's file at the facility and is available for review by Department personnel when needed.

**PROCEDURE (Continued)**

Note: If the licensee chooses not to utilize this optional simplified method by incorporating the provisions of the total care plan as part of the their hospice care waiver request, then the licensee will be required to submit a complete total care exception request in compliance with the requirements of Code of Regulation (CCR), title 22, section 87616 each time a resident who requires hospice care services develops a need for total care.

In caring for a hospice resident who also requires total care, facility staff, other than appropriately skilled medical professionals, must not perform any procedure that under law may only be performed by an appropriately skilled or licensed medical professional.

A hospice care waiver does not preclude the Department from requiring the relocation of a resident whose needs for personal care and supervision or health care are not being met in the facility. This waiver is subject to ongoing review by the Department and may be rescinded at any time. A copy of the hospice care waiver must be available for review at the facility.

In RCFEs which already have an approved Hospice Waiver (situations where the resident's need for total care occurs after the Hospice Waiver has been granted), the licensee may submit an addendum to the existing hospice care waiver plan that includes the total care component. If the Department approves this addendum, the licensee may then use the option of requesting the total care exception under the simplified methods noted above.

**87633      HOSPICE CARE FOR TERMINALLY ILL RESIDENTS**

**87633**

**POLICY**

A licensed and certified hospice agency is responsible for managing all aspects of a resident's hospice care. This includes short term care and long term care, in which a resident is less capable of self-care and may require the services of skilled medical professionals. Licensees with hospice waivers are responsible for carrying out their part of the hospice care plan, such as ensuring that residents receive their medication(s) at the appropriate times and meeting the non-related hospice needs of the individual. Licensees must be knowledgeable about each hospice care resident's anticipated dying process to adequately meet the care plan requirements of the hospice care resident. The licensee is also responsible for ensuring that the hospice agency is present in the facility, as required in the hospice care plan, and is effectively managing the needs of the individual.

**PROCEDURE**

As part of the evaluation visit, verify the following:

- The facility has a hospice waiver;
- If a resident is unable to turn or reposition in bed, a bedridden fire clearance that identifies the number of bedridden residents that can safely be cared for has been obtained by licensee;
- Facility staff are familiar with the hospice care plan;
- Hospice care is provided in accordance with the hospice care plan;
- Facility staff are not exceeding permitted levels of responsibility in caring for the medical needs of the resident.
  - Medications may be “set-up” by the pharmacy or a skilled medical professional for a period not to exceed 24 hours.
  - Confirm that medications are being administered in accordance with regulatory requirements. If a resident cannot self-administer medications and there is no family member or friend that can administer medications, a skilled medical professional must administer medications.
  - If the resident cannot self-administer medications, and there is no family member or friend trained to administer medications, or there is no skilled medical professional to administer medications, the resident's needs have exceeded the scope of care for a residential care facility for the elderly. Alternate placement arrangements must be explored by the licensee in consultation with the licensed hospice agency.



**87633 HOSPICE CARE FOR TERMINALLY ILL RESIDENTS (Continued) 87633**

**(a)(3) POLICY**

A licensee may also hold a hospice agency license, but may not require residents to use the facility-owned hospice agency or any other specific agency.

**(a)(6) PROCEDURE**

Encourage the licensee to discuss any concerns directly with the hospice agency. Frequent and effective communication between employees of the hospice agency and employees of the facility is essential to ensuring that the needs of the resident are met. If the licensee states that attempts to resolve resident care issues directly with the hospice agency have been unsuccessful, work directly with the hospice agency to address the concerns. Depending on the circumstances, consider reporting the hospice agency to the California Department of Public Health Licensing and Certification district office that serves the county in which the facility is located.

**(b)(4)(B) POLICY**

Morphine pumps are permissible if a licensee has received a hospice care waiver; the hospice resident, hospice health care professional, or other appropriately skilled professional is administering the medication; and the procedure is specified in the hospice care plan.

**(b)(5) POLICY**

A relative or friend NOT receiving monetary or any other form of compensation for their services, and is trained by the hospice agency may administer medications through a route, (e.g. oral, sublingual, subcutaneous, etc.) to his/her relative or friend in a residential care facility for the elderly provided it is specified in the hospice care plan; the

hospice agency provides a statement for the licensee's records that the relative or friend has been trained; and there is a plan in place to ensure that the resident can receive the needed medication by a licensed health professional if the relative or friend fails to arrive at the appointed time. Medications may be set up in advance for a period not to exceed 24 hours.

For any medications that need to be pre-drawn into an individual syringe or oral dosing unit, at a RCFE, the following shall apply:

- Only a registered nurse may pre-draw the medication for later administration; and

**87633      HOSPICE CARE FOR TERMINALLY ILL RESIDENTS (Continued)      87633**  
**POLICY (Continued)**

- The pre-drawn medication in the individual syringe or oral dosing unit must be labeled and properly stored.

A caregiver, who is hired and paid for by the family or resident, such as a personal care assistant, a private duty aide, or other similar paid caregiver, may not, under any circumstances, administer medications to a hospice care resident.

For purposes of this section, a resident of a residential care facility for the elderly cannot be considered a “friend” or a “relative.”

(d) **POLICY**

Hospital beds or full bed rails are permissible if the hospice care nurse indicates the need in the hospice care plan.

(h) **POLICY**

Senate Bill 1248, Chapter 114, Statutes of 1999, deleted Health and Safety Code section 1569.73(a)(4), which required an individual to reside in a facility for a period of at least six months prior to a physician’s authorization for hospice services. Effective July 13, 1999, there is no residency requirement for residents of residential care facilities for the elderly who have been diagnosed with a terminal illness and request hospice care. The licensee is still required to have a hospice waiver prior to any resident receiving hospice care.

(h)(2) **Repealed 8-1-05** **POLICY**

(h)(5) **POLICY**

Licensees may provide a guest unit for a relative if they wish to do so. They may make whatever provision for charging that is mutually acceptable. Such an arrangement cannot infringe upon the space required for other residents. A resident cannot be moved out of his/her room, or required to share a room, with another resident’s relative. If there is room in the hospice resident’s private room to make such an arrangement comfortable and the licensee, hospice agency, and resident agree to the arrangement, the relative may stay in the hospice resident’s room. The presence of a relative does not relieve the licensees of their responsibility to provide care and supervision.

**87633 HOSPICE CARE FOR TERMINALLY ILL RESIDENTS (Continued) 87633**

**POLICY (Continued)**

(i) **Repealed 8-1-05 POLICY**

(j) **POLICY**

Because of the degree of medical oversight necessary, or due to contagious risks, individuals who need nasogastric tubes, or who have active communicable tuberculosis, will not be permitted to reside in the facility regardless of the individual's hospice status.

(l) **POLICY**

To admit or retain a resident who is bedridden, as defined in Health and Safety Code section 1569.72 (b), the following requirements must be met:

1. The licensee must obtain and maintain a bedridden fire clearance, as required by Health and Safety Code sections 1569.72 (c) and 1569.73 (h), if the resident will be bedridden for more than fourteen (14) days. If the resident will be bedridden for 14 days or less, the licensee is not required to obtain and maintain a fire clearance.
2. The licensee must notify the local fire authority, as required by Health and Safety Code sections 1569.72 (f) and 1569.73 (h), within forty-eight (48) hours of admitting or retaining a resident who is bedridden, regardless of the length of time the resident will be bedridden.

These requirements apply even if a resident is on hospice.

**PROCEDURE**

Confirm that the hospice care plan reflects care that ensures the resident's needs are being met. If a resident's needs are not being met, either the licensee or the Department can require the resident to be relocated. Relocation is related to the resident's needs, not to bedridden status.

**87638 RESIDENT REQUEST FOR REVIEW OF HEALTH CONDITION RELOCATION ORDER 87638**

**PROCEDURE**

- (a) See Reference Material – Health and Behavior Section 5-1000.

**87640      TRANSFER DEPENDENCY**

**87640**

Repealed by Manual Letter No. CCL-92-10, effective 7/21/92.

**ARTICLE 12. DEMENTIA**

**87705      CARE OF PERSONS WITH DEMENTIA**

**87705**

(a) **POLICY**

Some residents may exhibit symptoms of dementia, which is defined in California Code of Regulations, title 22, section 87101(d), but may not have a medical diagnosis of dementia. Likewise, residents may have an inaccurate diagnosis of dementia. A resident may have been diagnosed by a physician to have “mild cognitive impairment”, as defined in California Code of Regulations, title 22, section 87101(m). A resident with mild cognitive impairment is not considered to have dementia; therefore, the requirements in California Code of Regulations, title 22, section 87705, Care of Persons with Dementia, do not apply.

The licensee must meet the requirements in California Code of Regulations, title 22, section 87705, Care of Persons with Dementia, for any resident diagnosed by a physician as having dementia, regardless of whether it is a primary or secondary diagnosis. In addition to the requirements in California Code of Regulations, title 22, section 87705, licensees who advertise, promote or otherwise hold themselves out as providing special care, programming, and/or environments for residents with dementia or related disorders shall also meet the specified requirements in California Code of Regulations, title 22, section 87706 (Advertising Dementia Special Care, Programming, and Environments) and section 87707 (Training Requirements if Advertising Dementia Special Care, Programming, and Environments). Licensees of a residential care facility for the elderly who accept residents diagnosed with dementia are not required to have a special program for dementia if the licensees do not advertise, promote or otherwise hold themselves out as providing special care, programming, and/or environments for residents with dementia.

**PROCEDURE**

Review the residents’ physician reports to determine if any residents have been diagnosed with dementia. The “Physician’s Report for Residential Care Facilities for the Elderly” (LIC 602A) may be used to determine whether the requirements in California Code of Regulations, title 22, section 87705 apply, since the form has an explanation of both dementia and mild cognitive impairment and has boxes that the physician may check for those diagnoses. If the licensee does not use the “Physician’s Report for Residential Care Facilities for the Elderly,” review the documentation from the physician in the residents’ files to determine if any residents have a diagnosis of dementia. Residents must be regularly observed for changes in behavior, as required in California Code of Regulations, Title 22, section 87466, Observation of the Resident, and must be reappraised on an ongoing basis, as required in California Code of Regulations, Title 22, section 87463, Reappraisals.

**PROCEDURE(Continued)**

If a resident displays behaviors such as wandering or elopement attempts, the licensee shall follow the requirements outlined in California Code of Regulations, title 22 , section 87705(k)(7), and facilitate the resident’s reassessment by his or her primary care physician or medical specialist, such as a geriatrician or a neurologist, as the resident may have a newly identified diagnosis of dementia.

(b)

**POLICY**

A licensee does not have to have a special dementia program or environment, such as a memory unit or dementia wing, in order to accept or retain residents diagnosed with dementia. Some facilities do not have special units, and persons diagnosed with dementia live with other residents in the general community. The licensee must be able to meet the resident’s needs and comply with regulatory requirements when caring for persons with dementia. This is required regardless of the resident’s diagnosis and where the resident lives in a facility. Meeting residents’ needs may include annual appraisals, physical plant enhancements like delayed egress, locked perimeters and auditory alarms if wandering or other behaviors are exhibited. This is not an exhaustive list, but these are common examples. A licensee may have a resident who is not diagnosed specifically with dementia, yet has wandering behavior. The licensee would need to assess the resident and develop a care plan for that behavior to ensure that the resident’s care and supervision needs are met.

**PROCEDURE**

If a licensee accepts or retains residents diagnosed by a physician to have dementia, then the licensing program analyst must ensure that the licensee meets all of the requirements in California Code of Regulations, Title, section 87705. In addition, the licensee must meet the plan of operation requirements in California Code of Regulations, Title 22, section 87208. A licensee who advertises or promotes dementia special care, programming or environments shall include additional information in the plan of operation as specified in California Code of Regulations, title 22, section 87706(a)(2). This includes a description of the physical environment, including environmental factors that ensure a safe, secure, familiar and consistent environment for residents with dementia as specified in California Code of Regulations, title 22, section 87706(a)(2)(H).

**(b)(1) POLICY**

Changes in the resident’s behavior and condition, including changes caused by the overuse of psychoactive medications, may fundamentally alter treatment plans and medication regimens. The resident’s physician, family members, responsible persons, and/or conservator, if any, may be able to provide insight on some behavioral changes and should be informed when a resident’s behavior or condition changes. Some changes may impact the licensee’s ability to care for a resident and there may be a need to consider another living arrangement.

**(b)(2) POLICY**

Licensees shall have safety measures to address behaviors such as wandering. See Regulation Interpretations and Procedures section 87705(k)(7) pertaining to residents who wander and section 87705(j) pertaining to staff alert features to monitor exits if exiting presents a hazard to any resident. Wandering often accompanies “sundowning.” Health and Safety Code Section 1569.2 added the term “sundowning” to the list of definitions. “Sundowning” is defined as a condition in which persons with cognitive impairment experience recurring confusion, disorientation, and increasing levels of agitation that typically coincide with the onset of late afternoon and evening.

**(b)(2) PROCEDURE**

In conducting preadmission appraisals for residents who have dementia, licensees should inquire about sundowning behavior. If sundowning behavior exists, not only does the facility need to meet the safety needs of the resident, but the activities and supervision needs of the resident must also be met. This may require additional awake staff for the nocturnal shift.

**(c)(1) POLICY**

A licensee cannot rely on a resident’s ability to cognitively respond to emergencies if he/she requires lengthy verbal prompts or coaching. This is not realistic in emergency situations. If a resident cannot respond to verbal prompting in a timely manner, the resident will need staff assistance to safely respond to emergency situations.

**(c)(2) POLICY**

For residents with dementia, particularly those who would need assistance leaving the building in an emergency, the Emergency Disaster Plan is a crucial element for resident safety. This plan is particularly important in facilities using delayed egress devices, locked perimeter fence gates or locked exterior doors. Licensees are encouraged to plan for the evacuation needs of all residents, especially those who will require additional staff assistance.

(c)(3)

**PROCEDURE**

The licensee shall maintain documentation pertaining to staff training in the personnel records, as specified in California Code of Regulations, Title 22, Section 87412(c)(2). For on-the-job training, such as the requirements in this section and in California Code of Regulations, title 22, section 87411(d), documentation shall consist of a statement or notation, made by the trainer, of the content covered in the training. There are additional training requirements in California Code of Regulations, title 22, section 87707, for licensees who advertise dementia special care, programming and/or environments, which also need to be properly documented as having been met by direct care staff.

Licensees are responsible for identifying residents' needs and the skills that direct care staff must have to meet those needs. Further, they must ensure that their training plans develop and maintain those skills. For example, it would be beneficial for licensees to provide training on how to properly care for and supervise residents who tend to wander or who exhibit sundowning behavior if residents in the facility have a propensity for this type of behavior.

(c)(3)(C)

**POLICY**

Prescription and nonprescription medications can alter the manifestations of dementia, and facility staff must be able to identify and report those effects. Without the explicit instructions of the prescribing physician(s), facility staff cannot alter prescription medication regimens.

(c)(5)

**PROCEDURE**

Assessment and reassessment procedures must successfully identify residents' needs. Refer to the following regulation sections from the California Code of Regulations, title 22, for additional information: section 87457, Pre-Admission Appraisal; section 87705(c)(4) pertaining to adequate staffing; section 87466, which requires licensees to observe and respond to residents' changing needs; section 87461, which requires mental status assessments; and section 87463 on reappraisals.

(c)(5)(A)

**POLICY**

When a resident exhibits changes, such as deterioration of mental ability or a physical health condition, the licensee shall ensure that such changes are documented and brought to the attention of the resident's physician and the resident's responsible person, if any. Changes observed and reported by facility staff may fundamentally alter treatment plans and medication regimens.





(g) and (g)(1)

**POLICY**

The intent of this regulation is not to deny residents access to owned personal grooming and hygiene products such as liquid soap, shampoo, mouthwash, toothpaste, deodorant, perfume and fingernail polish. As specified in California Code of Regulation, title 22, section 87468(a)(12), residents have the personal right to use their own personal possessions, including toilet articles. Just because a resident is diagnosed with dementia does not mean that he/she will try to ingest these personal grooming and hygiene items.

Residents should be allowed access to personal grooming and hygiene items unless there is documentation from the resident’s physician that the resident is at risk if allowed direct access to personal grooming and hygiene products. The goal is to maximize the residents’ independence while ensuring the health and safety of the residents.

(g) and (g)(1)

**PROCEDURE**

The licensee may be required to have a resident reassessed for the ability to safely access personal grooming/hygiene items if incident reports, review of facility notes, or resident observation indicate the need. Residents who are determined to be unable to manage their own personal grooming/hygiene items should not have access to the grooming items of other residents. Whether or not a dementia diagnosis exists, if a Physician’s Report indicates that an individual in the facility has mild cognitive impairment, it is especially important for the licensee and direct care staff to continuously observe and reappraise the resident for behavioral changes and make corresponding changes in the care and supervision provided to that resident.

(h)

**PROCEDURE**

When assessing a facility’s need to enclose an area with a fence or wall to protect he residents’ safety, review the actual or intended use of the space as described in the plan of operation to see if it will be used for residents’ recreation and leisure.

A fence or wall may not be necessary if an area is already completely enclosed. For example, if a facility has a totally enclosed central courtyard design, the courtyard would not need fencing as long as it is sufficiently secured. In this example, “totally enclosed courtyard” and “sufficiently secured” refers to outdoor areas with no access to the greater outdoors. California Code of Regulations, title 22, section 87705(l) was written as a result of Health and Safety Code section 1569.698 (Building standards; adoption; locked and secured perimeters in residential care facilities; persons with dementia), whereby the term “secured perimeters” means “locked exterior doors” or “perimeter fence gates.”

**PROCEDURE(Continued)**

In some cases, the front of a facility is a driveway or parking lot. If this area is not intended for resident use, it need not be fenced, provided that any door(s) leading to this area is monitored, as specified in California Code of Regulations, title 22, section 87705(j), or the exit is locked and meets the requirements in California Code of Regulations, title 22, sections 87705(l)(1) – (6). Some outdoor areas, such as the sides of a building, do not need to be fenced if the areas are not directly accessible from inside the building and are not intended for resident use.

Outdoor facility space that does not appear to be used for recreation and leisure might in fact be used by residents for this purpose. For example, facilities may have front porches or patios with benches, tables and chairs that may be used as areas where residents can talk, relax, play games or work on projects. If the area(s) is intended for resident use, the space must meet the requirements in California Code of Regulations, title 22, section 87705(h). Areas not intended for residents' use, or not actually used by residents, do not need fencing. Outdoor facility space used for the residents' recreation and leisure may be allowed, even if it is not completely enclosed by a fence with self-closing latches and gates, or walls, provided that the licensee submits an exception request to Licensing with an alternative plan that sufficiently protects resident safety. Licensing must approve this plan.

It is important for facility staff to constantly monitor the length of time any resident has been outside and to encourage the use of products and clothing to provide protection against the sun, hot or cold weather, and other elements. In some instance, it may not be reasonable for any resident to be outside due to extreme and/or potentially dangerous weather. Also, some medications can cause eye and skin reactions due to exposure to sunlight.

(i)

**POLICY**

Community Care Licensing Division approval is not required for wrist bands or other egress alert devices worn by the resident. The prior written consent of the resident or his/her conservator is required, and the device shall not violate the personal rights specified in California Code of Regulations, title 22, section 87468.

Just because residents have dementia does not mean that they are not able to consent to the use of egress alert devices. Probate Code section 4657 states that a person is presumed to be capable to make his or her own health care decisions unless he/she is conserved. A responsible person who is not the resident's conservator has no legal authority to consent to the use of an egress alert device.

(i) **POLICY (Continued)**

Probate Code section 1801(a) specifies that a “conservator of the person” may be appointed by the court for a “person who is unable to provide properly for his or her personal needs”. It is advisable for a resident with dementia to have a conservator. This may protect the resident over the term of the disease process. The legislature has indeed suggested that people with dementia should have a conservatorship to serve their unique and special needs, as specified in Probate Code section 2356.5(A)(1). Conservatorship is granted by the court and subject to review before and after it is granted. Note also that a “conservator of the estate,” or rather a conservator appointed by the court to handle a person’s financial affairs, does not have the authority to make medical decisions on behalf of the person, even though he or she is a legally appointed conservator.

The Department asserts that additional protections are warranted for residents wearing egress alert devices because these devices are such a substantial interference with the resident’s personal rights. That is why consent to the use of such devices can only come from the residents themselves or their duly appointed legal conservator.

California Probate Code section 4605 allows a person to prepare an Advance Health Care Directive, which is defined as either a written or oral health care instruction to one’s physician, or a Durable Power of Attorney for Health Care, which is a written instrument designating an agent to make health care decisions on that person’s behalf.

Probate Code section 4671(1) provides authority for personal care decisions to be included in a Durable Power of Attorney for Health Care. However, it is unlikely for personal care decisions to be included as most powers of attorney are executed on forms that do not include that specific authority. In the unusual situation where the Durable Power of Attorney for Health Care gives the agent the authority to make personal care decisions such as what the resident will wear, including wrist bands, the licensee may request an exception to California Code of Regulations, title 22, section 87705(i) in order to allow the agent, as opposed to only the resident or the conservator, make that decision. Residents without capacity to consent to wearing egress devices also lack capacity to sign a power of attorney.

**PROCEDURE**

In the unusual situation where a Durable Power of Attorney for Health Care gives the agent the authority to make other kinds of decisions, such as those concerning personal rights such as what the resident will wear (including wrist bands), the licensee may request an exception to California Code of Regulations, title 22, section 87705(i), which restricts this authority to the resident or the conservator.

**PROCEDURE (Continued)**

If such an exception is requested, the licensing program analyst must contact a staff attorney for assistance on each resident’s particular case. A legal consult includes, but is not limited to, verification that the Durable Power of Attorney for Health Care meets all of the following conditions:

- The Durable Power of Attorney for Health Care was signed before admission to the facility.
- If only effective upon the incapacity of the resident, incapacity was determined by the primary physician.
- The determination of incapacity was made prior to admission in the facility.
- The Durable Power of Attorney for Health Care specifically authorizes the agent to make personal care decisions.
- Personal care decisions include what the resident will wear.

If all the above conditions are met, a staff attorney will most likely recommend granting an exception to California Code of Regulations, title 22, section 87705(i).

For additional information, refer to the chart in the Evaluator Manual’s Regulation Interpretations and Procedures section 87705(1)(4), entitled, “Who Can Consent For Residents Diagnosed With Dementia Who Are Residing In A Residential Care Facility for the Elderly”?

(j)

**POLICY**

Auditory devices or other staff alert features to monitor exits, including pressure sensitive mats, are intended to function as a secondary means of alerting staff of a possible unsupervised exit. These devices are not intended to substitute for continuous resident monitoring and supervision. The requirement for the licensee to have an auditory device or other staff alert feature to monitor exits, if exiting presents a hazard to any resident, is to be enforced based on the behavior of the resident. Even though this requirement is in the section of the regulations pertaining to care of persons with dementia, California Code of Regulations, title 22, section 87208(a)(11) specifies that if the licensee intends to admit and/or specialize in care for one or more residents who have a documented history of behaviors that may result in harm to self or others, the facility plan of operation shall include a description of precautions that will be taken to protect that resident and all other residents. Also, California Code of Regulations, title 22, section 87211 requires that each licensee furnish to the licensing agency reports of any incident that threatens the welfare, safety or health of any resident, or unexplained absence of any resident. A resident who wanders will need to be reassessed as required in California Code of Regulations, title 22, section 87463. See Regulation Interpretations and Procedures section 87705(k) pertaining to incidents in which a resident wanders away from the facility unsupervised.

**PROCEDURE**

When evaluating a facility, the exterior door(s) or gate(s) should be tested not only for operation, but also for responsiveness of staff. Inattentiveness to auditory devices or staff alert features may indicate inadequate staffing levels or inadequate staff training to care for persons with dementia if exiting presents a hazard.

It is not necessary to require auditory devices or staff alert features on doors or gates leading to “enclosed courtyards” or “secured yards” if there are safeguards in place to ensure resident safety. In this example, “enclosed courtyards” refers to areas without access to the greater outdoors. “Secured yards” refers to enclosed areas without gates or with locked gates. California Code of Regulations, title 22, section 87705(l) was written as a result of Health and Safety Code section 1569.698 (Building standards; adoption; locked and secured perimeters in residential care facilities; persons with dementia), whereby the term “secured perimeters” means “locked exterior doors” or “perimeter fence gates.” The licensee is still responsible for care and supervision when residents are outdoors in these “secured” areas. A resident could go into a secured outdoor area and be exposed to hot or cold weather, or wander into this area at night unnoticed.

California Code of Regulations, title 22, section 87705(b)(2) requires the plan of operation to address the needs of residents with dementia, including safety measures to address behaviors such as wandering. Also, the California Code of Regulations, title 22, section 87208 requires the plan of operation to contain the staffing plan. Licensing program analysts must review the plan of operation to make sure that safeguards are in place for residents that wander. They can review the Physician’s Report for Residential Care Facilities for the Elderly (LIC 602A) to see if the physician marked the box indicating a resident wanders, (under “Mental Condition”). The licensee must protect the health and safety of any resident who may wander, even if that person has not been diagnosed as having dementia. If safeguards are in place and operable, the licensee does not have to obtain a waiver to lock exterior doors and does not have to install delayed egress devices on exterior doors or perimeter fence gates. In other words, the licensee must show how he/she will ensure that residents who cannot go out unsupervised are not exiting undetected by staff. In addition, the licensee does not have to meet the requirements in California Code of Regulations, title 22, sections 87706 and 87707, unless the licensee is advertising, promoting, or otherwise holding him/herself out as providing special care, programming, and environments for residents with dementia or related disorders.

An alert device may be needed even if a facility has locks on a gate. A facility may be on a busy street and the gardener or other employees may have keys to the gate lock, but they may not always lock the gate. If exiting presents a hazard to any resident diagnosed as having dementia, such as in this example, a staff alert feature would be needed even though the gate has a lock.

**POLICY (Continued)**

If exiting presents a hazard to any resident, windows may need auditory devices or other staff alert features. If a resident with dementia has a room on an upper level of a building with a large window that can be opened, then this regulation would apply. If a window leads to any area that is dangerous and not a secured area, then there must be an auditory device or other staff alert feature unless the fire marshal approves locking the window or sliding glass door. Health and Safety Code section 1569.6991 specifies that no security window bars may be installed or maintained on any residential care facility for the elderly unless the security window bars meet current state and local requirements, as applicable, for security window bars and safety release devices.

(k)                                      **POLICY**

Technical specifications for egress-control devices of the time-delay type are in Health and Safety Code section 1569.699.

**PROCEDURE**

Facilities with delayed egress devices on exterior doors or perimeter fence gates may be permitted to install locks [with an approved waiver to California Code of Regulations, title 22, section 87468(a)(6), Personal Rights]. However, the local fire jurisdiction has exclusive authority to determine conformance to Health and Safety Code sections 1569.698, pertaining to locked and secured perimeters in residential care facilities and persons with dementia, and 1569.699, pertaining to exit doors, fences, and egress-control devices of the time-delay type. Health and Safety Code section 1569.698(d) states in part: ..“ residential care facilities for the elderly that accept or retain as residents persons with dementia, and that choose to utilize the security options of egress-control devices of the time-delay type in addition to secured perimeter fences or locked exit doors, shall comply with Health and Safety Code section 1569.699, or regulations adopted by the State Building Standards Commission, whichever is operative.”

(k)(2)                                      **PROCEDURE**

Local fire jurisdictions have the exclusive authority to determine if delayed egress devices conform to Health and Safety Code section 1569.699. Suspected fire safety violations must be reported to the local fire jurisdiction that has granted the most current fire clearance to the facility. Appropriate enforcement and follow-up action by the Community Care Licensing Division must be taken.

Fire clearances are essential for the protection of resident life and fire safety. Each facility determines the ambulatory status of the population to be served. This may include persons who are ambulatory, nonambulatory or bedridden.

(k)(2)    **PROCEDURE (Continued)**

This may also include a combination of any of the above. Local fire jurisdiction inspectors will conduct facility-wide inspections based on the information provided by the licensee. For example, if a licensee wishes to have delayed egress devices, this will need to be approved by the local fire jurisdiction inspector. If a facility wishes to care for persons who are bedridden, this too will need to be reviewed by the local fire jurisdiction inspector. The local fire jurisdiction determines whether or not a facility has met the conditions necessary for the licensee-requested fire clearance. A facility is not licensed until an appropriate fire clearance has been obtained by the licensee. Any time a licensee wishes to change the ambulatory status of the population served specific to nonambulatory or bedridden, a new fire inspection request must be initiated.

(k)(5)-(6)    **POLICY**

Licensees' responsibilities do not end when residents leave the premises. Licensees must continue to ensure the protection of residents from safety hazards or personal discomfort, including adverse weather conditions. When staff escort residents with dementia who wander away from the facility, residents who remain at the facility must also be supervised.

(k)(5)-(6)    **PROCEDURE**

Facility staff must monitor the length of time any resident has been outside and encourage the use of products and clothing to provide protection against the sun, hot or cold weather, and other elements. In some instances, it may not be reasonable for any resident to be outside due to extreme and/or potentially dangerous weather. Also, some medications can cause eye and skin reactions due to exposure to sunlight.

(k)(7)    **PROCEDURE**

If residents who have been diagnosed by a physician to have dementia elope from a facility, licensees must report each incident to the Community Care Licensing Division and to the resident's conservator and/or other responsible person, if any, and to any family member who has requested notification. Reports to Emergency Services, such as 911 should also be made in the event of wandering or elopement events. Frequent reports might suggest the need for fundamental changes in the plan of operation, staff-to-resident ratios, or acceptance and retention criteria. The licensee may also consider the use of egress alert devices worn by the resident with the prior written approval of the resident or conservator, provided that such devices do not violate the resident's personal rights specified in California Code of Regulations, title 22, section 87468, Personal Rights. Auditory or other staff alert features can be used, including pressure sensitive mats.

(k)(7)      **PROCEDURE** (Continued)

The use of a wander guard may be considered. California Code of Regulations, title 22, section 87705(j) requires the licensee to have an auditory device or other staff alert feature to monitor exits if exiting presents a hazard to any resident who is diagnosed by a physician to have dementia. See Regulation Interpretations and Procedures section 87705(j) pertaining to staff alert features to monitor exits if exiting presents a hazard to any resident.

(k)(8)      **POLICY**

Minimum staff ratios are not specified, but licensees must ensure that a sufficient number of staff are available to meet residents’ care and supervision needs, even if staff are required to escort residents with dementia who wander away from the facility. There must be an adequate number of direct care staff to support each resident’s physical, social, emotional, safety and health care needs as identified in his/her current appraisal. The licensee must relocate the resident if he/she cannot meet his/her needs by having adequate staffing.

Delayed egress devices, locked perimeter fence gates, and locked exit doors are not substitutes for trained staff providing direct care and supervision. They assist staff in protecting residents from hazards and discomfort.

(l)      **POLICY**

Facilities with locks on exterior doors or secured perimeter fence gates may be permitted to install delayed egress devices or locks on perimeter fence gates. Health and Safety Code section 1569.698(d) states that licensees of residential care facilities for the elderly who accept or retain as residents persons with dementia, and that choose to utilize the security options of egress-control devices of the time-delay type in addition to secured perimeter fences or locked exit doors, shall comply with Health and Safety Code section 1569.699, or regulations adopted by the State Building Standards Commission, whichever is operative. However, the local fire jurisdictions have the exclusive authority to determine conformance with Health and Safety Code sections 1569.698, pertaining to locked and secured perimeters in residential care facilities and persons with dementia, and 1569.699, pertaining to exit doors, fences, and egress-control devices of the time-delay type.

(l)(2)      **PROCEDURE**

Local fire jurisdictions determine if locks on perimeter fence gates or on exterior doors conform to Health and Safety Code section 1569.698. Suspected fire safety violations must be reported to the local fire jurisdiction who has granted the most current fire clearance to the facility. Appropriate enforcement and follow-up action by the Community Care Licensing Division must be taken.



(1)(2)      **PROCEDURE (Continued)**

Fire clearances are essential for the protection of resident life and fire safety. Each facility determines the ambulatory status of the population to be served. This may include persons who are ambulatory, nonambulatory or bedridden. This may also include a combination of any of the above. Local fire jurisdiction inspectors conduct facility-wide inspections based on the information provided by the licensee. For example, if a licensee wishes to have locks on perimeter fence gates or on exterior doors, this will need to be approved by the local fire jurisdiction inspector. If a facility wishes to care for persons who are bedridden, this too will need to be reviewed by the local fire jurisdiction inspector. The local fire jurisdiction determines whether or not a facility has met the conditions necessary for the requested fire clearance. A facility is not licensed until an appropriate fire clearance has been obtained by the licensee. Any time a licensee wishes to change the ambulatory status of the population served specific to nonambulatory or bedridden, a new fire inspection request must be initiated.

(1)(4)      **PROCEDURE**

In facilities with locked exterior doors or locked perimeter fence gates, where residents with dementia reside, consent statements or voluntary admission statements are required for all residents. All residents must acknowledge that the facility has locks on perimeter fence gates or exterior doors and that their admission is voluntary, either by directly signing a written statement or through their conservators' written consent. No other person may give consent for admission to a facility with locked exterior doors or perimeter fence gates.

Just because residents have dementia does not mean that they are not able to understand a written statement, which they are required to sign in order to give up their personal rights to enter a locked facility or to wear egress alert devices. Probate Code 4657 states that a person is presumed to be capable to make his or her own health care decisions unless he/she is conserved. A responsible person who is not the resident's conservator has no legal authority to consent to having the resident in a locked facility or to the use of an egress alert device.

For additional information, refer to the Evaluator Manual's Regulation Interpretations and Procedures section 87705(i).

The chart on the following page may be used as a guide to help determine who can give consent, including the type of consent, for residents who have been diagnosed with dementia and who live in a residential care facility for the elderly:

**WHO CAN CONSENT FOR RESIDENTS DIAGNOSED WITH DEMENTIA WHO ARE**

	Durable Power of Attorney	Advance Health Care Directive (formerly health care power of attorney)	Conservatorship	Responsible Persons
Definitions	A written instrument in which one person, the principal, appoints another person to act in place of or on behalf of the principal. [Probate Code § 4402] Most powers of attorney are for financial management and/or for personal care decisions.	A person’s written or oral direction concerning a health care decision. [Probate Code § 4623]  “Power of Attorney for Health Care” means a written instrument designating an agent to make health care decisions. [Probate Code § 4629]	A conservator of the person may be appointed for a person who is unable to provide properly for his or her personal needs. [Probate Code § 1801(a)]	The term “responsible person” is only in CCL regulations, and means “that individual or individuals, including a relative, health care surrogate decision maker, or placement agency, who assists the resident in placement or assumes varying degrees of responsibility for the resident’s well-being.”
Legal Authority	Probate Code sections 4000-4545	Probate Code sections 4600-4805	Probate Code division 4, section 1400 et seq.	Title 22, CCR section 87101(r)(6)
Can consent for someone to be placed in a facility with secured perimeters?	No, pursuant to Health & Safety Code section 1569.698(f).	No, pursuant to Health & Safety Code section 1569.698(f).	Yes, with court approval.	No.
Can consent for someone to wear wrist bands or other resident egress alert devices?	No, unless certain conditions* are specifically met that warrant granting an exception.	No, unless certain conditions* are specifically met that warrant granting an exception.	Yes, with court approval.	No.
Can consent to hide or camouflage resident’s medications in other substances?	No.	No.	Yes, only with specific court approval.	No.

**87705 CARE OF PERSONS WITH DEMENTIA (Continued)**

**87705**

(1)(4) **PROCEDURE (Continued)**

**\*Conditions include:**

- 1) signed by resident prior to admission to the facility;
- 2) if only effective upon the incapacity of the resident, primary physician made determination of incapacity prior to admission to the facility;
- 3) agent is specifically authorized to make personal care decisions; and
- 4) personal care decisions include what the resident will wear.

(1)(5) **POLICY**

Facilities with locked exterior doors must have safe interior and exterior space permitting unrestricted resident movement. California Code of Regulations, title 22, section 87705(h) specifies that outdoor facility space used for resident recreation and leisure shall be completely enclosed by a fence, with self-closing latches and gates, or walls, to protect the safety of residents.

See the Evaluator Manual's Regulation Interpretations and Procedures section 87705(h).

(1)(6) **POLICY**

Minimum staff ratios are not specified, but licensees must ensure that a sufficient number of staff are available to meet residents' care and supervision needs; even if staff are required to escort residents with dementia who wander away from the facility. There must be an adequate number of direct care staff to support each resident's physical, social, emotional, safety and health care needs as identified in his/her current appraisal. The licensee must relocate the resident if he/she cannot meet his/her needs by having adequate staffing.

**ARTICLE 13. ENFORCEMENT**

**87755      INSPECTION AUTHORITY OF THE LICENSING AGENCY**

**87755**

(a) **POLICY**

Health and Safety Code section 1569.32 authorizes the licensing agency to inspect any licensed or unlicensed premises providing personal care, supervision and services. This includes the authority to enter and inspect the entire premises (inside and outside). However, it is the division's policy to inspect licensee and staff living quarters at the time of initial licensure only when there is reason to believe there are health or safety hazards that would threaten residents. Typically, an analyst will glance at or quickly scan licensee and staff living quarters for obvious health and safety hazards. If any such hazards are evident, a more thorough inspection is necessary. Also, an analyst is required to inspect licensee and staff living quarters in the event of a relevant complaint (e.g., staff member's room is unsanitary). Refer to Health and Safety Code section 1569.35(c) and Reference Material section 3-2300.

Health and Safety Code section 1569.36 requires Community Care Licensing Division agencies to inform specified persons and/or agencies of any substantiated complaints against a facility involving certain types of licensing deficiencies. Under this law, the licensing agency is also responsible for providing all residential care facilities for the elderly with the name and address of the state ombudsman and, where applicable, the local ombudsman.

**Refer to the Communications Agreement between the California Department of Social Services and the State Department of Aging (see Evaluator Manual Appendix) for agreements regarding reporting responsibilities with the Long-Term Care Ombudsman. This Communications Agreement meets the intent of Health and Safety Code section 1569.36.**

In all cases when it is requested, licensing agencies will notify the resident's authorized representative(s) of any substantiated complaint against a facility. Even if it is not requested, licensing agencies may elect to notify authorized representative(s) of substantiated complaints.

Licensing agencies are to give priority to complaints referred by ombudsmen, although complaints that allege an immediate threat to resident health and safety will be given first priority regardless of complainant.

**PROCEDURE**

See Reference Material sections 2-6500 and 3-3000.

(a) **POLICY**

An evaluation visit will be made to each facility once each year. Except for prelicensing visits, all evaluation visits will be unannounced unless approved otherwise by the licensing supervisor.

To ensure the health and safety of residents, it may be necessary to interview residents and/or their “responsible person” (authorized representative), staff and other persons, as appropriate, in addition to the licensee/administrator.

Analysts should have a complete knowledge and understanding of licensing laws and regulations prior to attempting any evaluation.

A Facility Evaluation Report (LIC 809) is to be completed for each site visit during which an evaluation is done. (See Regulation Interpretations sections 87756(c-e) and 87759).

**PROCEDURE**

Before making a field visit, review the facility case file to determine if required documents or information are lacking or need to be updated. It is important to ensure that required criminal record clearances and fire clearances are current. Prior to any complaint visit, the facility file should be reviewed and the number of substantiated complaints noted (See Regulation Interpretations section 87755). Any records that are not confidential and may be helpful should be photocopied and added to the field folder.

**NOTE:** Any confidential records are not to be shared with any individual other than the affected person(s). (See Reference Material section 2-6500.)

Upon arriving at a licensed facility and finding no one on the premises, **do not leave a Facility Evaluation Report (LIC 809) at the facility.** Note on the Weekly Itinerary (LIC 981) that the visit was not completed. Upon returning to the Regional Office, note the date and circumstances on the facility file Contact Sheet (LIC 185). Upon returning to the facility and making contact with the licensee/administrator, note the previous attempt to visit in the opening statement of the LIC 809.

Sometimes it is advisable to make a site visit accompanied by another person, such as another analyst, the licensing supervisor, a nurse, an auditor, an investigator or a placement worker. These occasions are determined by the nature of the visit, the time of the visit, the type of the facility, or even the general attitude of the licensee/administrator toward the analyst or the agency. It is strongly recommended that visits made during other than normal working hours be made by an analyst team.

**PROCEDURE (continued)**

If a licensee/administrator denies access to the facility after proper identification is presented and the reason for the visit is explained, leave the premises, document the denial on the LIC 809, and mail a copy of the LIC 809 to the licensee informing him/her that denial of access is a violation of law (Health and Safety Code Section 1569.32, 1569.33 or 1569.35, as appropriate). Discuss with the licensing supervisor the need for an office conference with the licensee.

If allowed to enter the facility, contact the person in charge and explain the reason for the site visit. It is recommended that the tour of the facility be made in the company of facility staff. Deficiencies can then be pointed out and a plan of correction discussed as deficiencies are identified. Do not hesitate to ask the facility representative to provide a time and place in which staff or residents may be interviewed in private.

Licensees must respect residents' rights to be treated with dignity and to have privacy. Licensing staff must recognize that licensees have the same rights. It is not necessary to use an overbearing manner when enforcing licensing regulations.

Date and initial any document(s) received from the licensee and note on the LIC 809 that the document(s) was obtained during the visit.

Use the Facility Review Regulation Index to ensure that an evaluation visit is completed. (See Reference Material Section 3-3400.)

If there is a potentially dangerous situation in or near a facility that could evolve into a verbal or physical assault, leave the facility immediately in the safest manner possible. Departmental policy and procedures on reporting any verbal or physical assault by a licensee, resident or other person against licensing staff are described in Information Release 17-82 (Evaluator Manual Appendix, Tab I).

When the site visit has been completed, conduct an exit interview with the licensee/administrator or, if the licensee/administrator is not present, the person in charge of the facility. [See Regulation and Regulation Interpretations Section 87756(c-e.)]

**Deficiencies in Compliance**

(b) **POLICY**

Health and Safety Code section 1569.38 has been implemented without regulations. Specifically, it requires:

Each residential care facility for the elderly shall place in a conspicuous place copies of all licensing reports issued by the department within the preceding 12 months, and all licensing reports issued by the department resulting from the most recent annual visit of the department to the facility. This subdivision shall not apply to any portion of a licensing report referring to a complaint that was found by the department to be unfounded or unsubstantiated. The facility, during the admission process, shall inform the resident and the resident's responsible person in writing that licensing reports are available for review at the facility, and that copies of licensing reports and other documents pertaining to the facility are available from the appropriate district [regional] office of the department. The facility shall provide the telephone number and address of the appropriate district [regional] office.

**PROCEDURE**

Cite Health and Safety Code section 1569.38 if a violation of this law is documented.

(d) **POLICY**

It is expected that the Facility Evaluation Report (LIC 809) or the Complaint Investigation Report (LIC 9099) will be completed in the field at the conclusion of the evaluation visit. Exceptions to this could occur if, for example, the inspection becomes lengthy and complex and extends beyond normal working hours--or if there is uncertainty about whether a violation should be cited as a deficiency or a serious deficiency, and consultation with a licensing supervisor is necessary.

**PROCEDURE**

If a full report of the evaluation visit on the LIC 809 or the LIC 9099 cannot be prepared by the end of the visit, prepare an LIC 809 or LIC 9099 that states the date and purpose of the visit, is signed by the licensee/administrator (or designee), and clearly documents that:

1. Deficiencies were discussed during the exit interview.
2. An appointment will be made to review the report and determine a plan of correction either at the facility or at the Regional Office. (An attempt should be made to schedule the appointment no more than two working days after the date of the evaluation visit.)

**PROCEDURE (continued)**

Discuss the following during all exit interviews:

1. Deficiencies observed, noted and cited on the LIC 809 or the LIC 9099.
2. The plan for correcting any deficiencies, including due dates, and, if necessary, interim steps for completing each part of the plan.
3. The civil penalties process and the licensee's appeal rights. (See Regulation section 87455 and Reference Material Section 1-0040, Civil Penalties.)

If a facility has deficiencies that could pose an immediate threat to residents' health and safety (e.g., a jagged, broken window is observed in an area frequently used by residents), remain on the premises until any dangerous conditions can be corrected.

The LIC 809 and the LIC 9099 are used for documenting site visits. The LIC 809 is also used for documenting civil penalties and office visits. The LIC 809 and the LIC 9099 are both signed by the licensee/administrator (or designee) and the analyst. The original of a completed form is kept on file by the Regional Office, a copy is given to the facility, and another copy is kept by the Regional Office to reproduce for mailing to other public agencies or entities upon request (e.g., local ombudsmen).

See Reference Material sections 3-3100 through 3400.

(e)(1)

**POLICY**

Cite the most appropriate licensing regulation or law on the Facility Evaluation Report (LIC 809) or the Complaint Investigation Report (LIC 9099).

**PROCEDURE**

Complete the top section on the first page of the LIC 809 or the LIC 9099. This includes the time spent entering and exiting the facility and the address and telephone number of the licensing agency. It is important that the top section be completed. The additional pages need the facility name, the date and the page reference.

Clearly number and separate each deficiency. This ensures that there will be a clear reference to the violation when either issuing a citation or securing a plan of correction. After numbering the deficiency, indicate the regulation section number being cited. After the regulation reference, describe the deficiency with reasonable specifics--who, what, where and to what extent. If citing multiple deficiencies that pertain to the same regulation, group them together rather than document each one separately. When grouping together a number of deficiencies that apply to a section and its subsections, identify each subsection.



**PROCEDURE (Continued)**

Discuss and develop a reasonable plan of correction with the licensee/administrator. Ensure that a clear explanation of how and when each deficiency will be corrected is legibly written on the right-hand portion of the LIC 809 directly across from the deficiency being cited.

See Reference Material sections 3-2340 and 3-3100 through 3-3300.

(e)(4)(A)(1)

**POLICY**

A serious deficiency is defined in Regulation section 87101(s)(1) as a “deficiency that presents an immediate or substantial threat to the physical health, mental health, or safety of the residents or clients of a community care facility.” Regulation Section 87758 lists examples of key regulations that may result in a serious deficiency citation. That list is not conclusive, and lack of compliance with any of those regulations does not automatically result in a serious deficiency citation. However, noncompliance with any of those regulations listed will **generally** indicate the existence of a threat to the health and safety of residents commensurate to a serious deficiency and should be so cited.

Further, lack of compliance with Regulation section 87355, relating to criminal record clearance, and Regulation section 87202, relating to fire clearance, will always be cited as **serious deficiencies**. These two requirements are essential to ensuring the provision of adequate and safe care to residents.

**PROCEDURE**

After identifying a deficiency, write the deficiency on the Facility Evaluation Report (LIC 809). (See Reference Material sections 3-2010, 3-3010, 3-3120 and 3-3400.) All Type A and Type B deficiencies are to be included on the LIC 809, indicating whether or not correction was made at the time of the visit. It is recommended that the deficiencies be noted on the Detail Supportive Information (LIC 812) for reference. (See Reference Material section 1-0000, Enforcement Actions.)

(e)(4)(B)

**POLICY**

After considering the factors identified in Regulation sections 87756(e)(4)(A)(1) through (4), it may be necessary to establish interim corrective steps in order to achieve a fair and reasonable final correction due date.

(e)(4)(B)

**POLICY(Continued)**

The licensee may request an administrative review of the penalty notice visit or the follow-up penalty assessed visit (see Regulation section 87763). As a result of this review, the Regional Manager (or designee of a higher staff level than an analyst) may amend, extend the due date, retain or dismiss the penalty. The analyst is not authorized to make these decisions. Such a request should be made in writing within ten days of receipt of the Facility Evaluation Report (LIC 809) or the Civil Penalty Assessment—Licensed Facility (LIC 421). The Penalty Review (LIC 178) is sent to the licensee as official notification of the administrative review.

**PROCEDURE**

There will be occasions when, because of the deficiency cited, the licensee will be unable to provide an immediate plan of correction. For example, a tour of the facility reveals that the roof is leaking. The licensee states that he/she cannot provide a plan of correction date before talking to a contractor. A possible interim plan of correction would be to require the facility to secure a contractor and specify a reasonable completion date within ten days.

The more specific the plan of correction, the easier it is to jointly identify a reasonable correction date and the less chance there is for any misunderstanding during the return visit to determine if the deficiency has been corrected.

(e)(5)

**POLICY**

Licensing regulations require that a notice of deficiency be issued during the licensing visit when civil penalties are involved. In preparing the notice, state the following on the Facility Evaluation Report (LIC 809): 1) whether the violation is a Type A or Type B serious deficiency; 2) the amount of the penalty if the deficiency is not corrected; and 3) the date the penalty is to begin.

Civil penalties are assessed for serious deficiencies (Type A or Type B) that are not corrected by the plan-of-correction date. A civil penalty of \$50 per violation is assessed up to a maximum of \$150 a day. (See Enforcement Section on Civil Penalties, Reference Material Section 1-0040.)

When possible, set common correction dates. When a single plan-of-correction date can be established, the following phrase may be used: “All deficiencies must be corrected by (the specific date) or be subject to a penalty of \$50 a day per violation,” rather than write this information after each deficiency.

**87758      SERIOUS DEFICIENCIES - EXAMPLES      87758**

(a)(1)      **POLICY**

A violation of a criminal record regulation is always cited as a serious (Type A) deficiency.

(a)(2)      **POLICY**

A violation of a fire clearance regulation is always cited as a serious deficiency.

**87759      FOLLOW-UP VISITS TO DETERMINE COMPLIANCE      87759**

See Reference Material section 1-0040, Enforcement.

**87761      PENALTIES      87761**

See Reference Material section 1-0040, Enforcement.

See Reference Material section 2-7000 for procedures on collection of civil penalties.

**87763      APPEAL PROCESS      87763**

(b)      **POLICY**

If a deficiency has not been corrected, civil penalties will continue to accrue during the review process.

The Regional Manager or designee will act as reviewer, and may amend, retain or dismiss the notice of deficiency and/or the notice of penalty. The correction date may also be extended. But granting an extension should be the exception; an extension should only be granted where there is evidence that correction delays are beyond the control of the licensee.

Upon completion of the review, a Penalty Review (LIC 178) is drafted that notifies the licensee of action taken on his/her appeal. A copy of the LIC 178 is kept in the facility file.

**ARTICLE 14. ADMINISTRATIVE ACTIONS – GENERAL**

**ARTICLE 15. ADMINISTRATOR CERTIFICATION TRAINING  
PROGRAMS – VENDOR INFORMATION**