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## EVALUATOR MANUAL TRANSMITTAL SHEET

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<p><b><u>Distribution:</u></b></p> <p><input checked="" type="checkbox"/> Adult and Senior Care Program  <input type="checkbox"/> Children's Residential Program  <input type="checkbox"/> Child Care Program  <input type="checkbox"/> All Programs</p>	<p><b><u>Transmittal No.</u></b> 16RCFE-03</p> <hr/> <p><b><u>Date Issued</u></b> August 2016</p>
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**Subject:**

Regulation Interpretations and Procedures for Residential Care Facilities for the Elderly

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**Reason for Change:**

Revises Section 87465, Incidental Medical and Dental Care Services

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**Filing Instructions:**

REMOVE: pages 98 through 107

INSERT: pages 98 through 107

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**Approved:**

*Original signed by Seton Bunker*

*August 12, 2016*

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**SETON BUNKER, Chief**  
 Policy & Process Management Bureau  
 Community Care Licensing Division

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Date

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**87465 INCIDENTAL MEDICAL AND DENTAL CARE SERVICES****87465**

(Continued)

(a)(2)

**POLICY (Continued)**

Licenses are always responsible for ensuring that residents' health care needs are addressed. This applies to emergency situations. Regardless of any transportation schedules, if a resident needs immediate treatment, the facility is responsible for immediately providing or arranging for transportation to the site of treatment.

**TRANSPORTATION COSTS**

Supplementary Security Income/State Supplementary Payment Recipients:

Transportation to meet medical and dental appointments, and to obtain needed medical services, **is a** basic service that must be provided at the basic rate. For Supplementary Security Income/State Supplementary Payment recipients, the basic rate refers to the Supplementary Security Income/State Supplementary Payment established rate. [See **California Code of Regulations, Title 22, Section 87101(b)(1).**] For Supplementary Security Income/State Supplementary Payment residents, transportation, as with all basic rate services, must be directly provided or arranged for by the licensee **at no additional charge**.

Private Pay:

There are two ways a licensee may handle transportation costs for a private pay resident. Transportation may either be included as part of the basic rate or be itemized as an individual service within the admission agreement, as follows:

1. Basic rate. When the admission agreement includes transportation services in a basic rate structure (no itemization of services), the licensee may not assess additional charges for this service while the admission agreement is in force. If the admission agreement does not specify transportation availability in terms of days and/or times, a resident can assume that medical transportation will be provided or arranged for **at no additional charge** any time it is needed by the resident.
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.

**87465 INCIDENTAL MEDICAL AND DENTAL CARE SERVICES****87465**

(Continued)

(a)(2)

**POLICY (Continued)**

- 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 (regarding 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.

(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.

**87465 INCIDENTAL MEDICAL AND DENTAL CARE SERVICES****87465**

(Continued)

(a)(5)

**PROCEDURE**

Since California law requires a physician's recommendation that the person's health would benefit from the use of marijuana in the treatment of a specified condition, or any other illness for which it provides relief, medical marijuana is treated as a medication. Assistance in self-administration of medical marijuana must be given per physician's directions and in accordance with applicable regulations.

See Regulation Interpretations and Procedures for Residential Care Facilities for the Elderly Section 87458 for more information on medical marijuana.

(a)(6)

**POLICY**

Direct care staff (non-licensed/non-certified) may assist residents with self-administration of medication by measuring an oral liquid medication in the appropriate measuring device. This can include, but not be limited to, calibrated cups, droppers, oral syringes (no needle) and dosing spoons for the resident to self-administer orally.

The use of the oral syringe (no needle) is appropriate when dosage amounts are very small (e.g., 1 to 2 cc). Pouring this amount directly into a medicine cup would not be accurate, and could potentially be unsafe by giving too much of the oral liquid to self-administer.

(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.

**87465 INCIDENTAL MEDICAL AND DENTAL CARE SERVICES****87465**

(Continued)

(a)(6)(C)

**POLICY (Continued)**

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.
  - 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 **California Code of Regulations, Title 22, Section 87465(a)(6)(C)** and Regulation Interpretations **and Procedures for Residential Care Facilities for the Elderly** 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 to crush a resident's medication **in order** to enhance swallowing or taste.

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

**87465 INCIDENTAL MEDICAL AND DENTAL CARE SERVICES****87465**

(Continued)

(a)(6)(D)

**POLICY (Continued)**

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 **California Code of Regulations, Title 22, 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.
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.

**87465 INCIDENTAL MEDICAL AND DENTAL CARE SERVICES****87465**

(Continued)

**(a)(6)(D) POLICY (Continued)**

- 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 and Procedures for Residential Care Facilities for the Elderly 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.

**(a)(7) PROCEDURE**

See California Code of Regulations, Title 22, Section 87465(c)(3) and Regulation Interpretations and Procedures for Residential Care Facilities for the Elderly 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.

**87465 INCIDENTAL MEDICAL AND DENTAL CARE SERVICES****87465**

(Continued)

(b) and (c)

**POLICY (Continued)**

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 California Code of Regulations, Title 22, 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.

**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 California Code of Regulations, Title 22, 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 California Code of Regulations, Title 22, 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 California Code of Regulations, Title 22, 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.

**87465 INCIDENTAL MEDICAL AND DENTAL CARE SERVICES****87465**

(Continued)

(f)(3)

**POLICY**

The Emergency Disaster Plan for Residential Care Facilities for the Elderly (LIC 610E) is available for this purpose.

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

(g)

**POLICY**

The California Emergency Medical Services Authority has divided ambulance service areas into over 300 ambulance zones. The zones are designated as either exclusive or non-exclusive.

An exclusive zone, or exclusive operating area, is an area or subarea in which local Emergency Medical Services restricts operations to one or more emergency ambulance service(s) or provider(s). A non-exclusive zone, or non-exclusive operating area, is an area or subarea in which local Emergency Medical Services does not restrict operations to one or more emergency ambulance service(s) or provider(s).

- Health and Safety Code Section 1797.224 provides:

A local Emergency Medical Services agency may create one or more exclusive operating areas in the development of a local plan, if a competitive process is utilized to select the provider or providers of the services pursuant to the plan. No competitive process is required if the local Emergency Medical Services agency develops or implements a local plan that continues the use of existing providers operating within a local Emergency Medical Services area in the manner and scope in which the services have been provided without interruption since January 1, 1981. A local Emergency Medical Services agency which elects to create one or more exclusive operating areas in the development of a local plan shall develop and submit for approval to the authority, as part of the local Emergency Medical Services plan, its competitive process for selecting providers and determining the scope of their operations. This plan shall include provisions for a competitive process held at periodic intervals. Nothing in this section supersedes Section 1797.201.

- Health and Safety Code Section 1797.85 provides:

"Exclusive operating area" means an Emergency Medical Services area or subarea defined by the emergency medical services plan for which a local Emergency Medical Services agency, upon the recommendation of a county, restricts operations to one or more emergency ambulance services or providers of limited advanced life support or advanced life support.

To determine if an Emergency Medical Services area or subarea is a non-exclusive operating area for scope of operations that includes ALL emergency ambulance calls (and includes "other phone access" including 7-digit/direct request), the contact information is: Ambulance Coordinator of the California Emergency Medical Services Authority at (916) 322-4336.

**87465 INCIDENTAL MEDICAL AND DENTAL CARE SERVICES****87465**

(Continued)

(g)

**POLICY (Continued)**

A waiver shall not be granted by the Department to any licensee whose facility is located in an exclusive operating area for ALL emergency ambulance calls (see Health and Safety Code Sections 1797.224 and 1797.85 above).

**PROCEDURE**

Written requests to waive this regulation will be reviewed on a case-by-case basis to determine if the alternative means of meeting the regulatory requirement meets or exceeds the regulatory intent. The terms of any waiver granted must clearly state that waivers to this regulation are revocable at any time by the Department. When considering requests to waive this regulation, the Licensing Program Analyst may consider the following factors. [Note: This is neither a conclusive nor definitive list and should not be used as a checklist of any kind. Any licensee who is granted a waiver must be made aware of this fact in advance, as it is an important factor for the licensee and the ambulance provider to consider when making contractual obligations.]

- I. Does the licensee have written verification that the Emergency Medical Services area or subarea is a non-exclusive operating area for scope of operations that includes ALL emergency ambulance calls (and includes “other phone access” including 7-digit/direct request)?
  - Any licensee whose facility is located in an exclusive operating area for all emergency ambulance calls shall not be granted a waiver by the Department (see Health and Safety Code Sections 1797.224 and 1797.85 above).
- IIa. Will the contracted ambulance provider sign a document declaring under the penalty of perjury that the ambulance provider will use the Emergency Medical Dispatch certified by the National Academies of Emergency Dispatch?
- IIb. Will the ambulance provider agree to make available, upon request by the Licensing Program Analyst, its protocols for emergency response?
- IIIa. For life-threatening incidents, will the ambulance provider have at least one person in the ambulance who is an Advanced Life Support provider?
- IIIb. Will the licensee maintain documentation verifying Advanced Life Support authorization by the local Emergency Medical Services Agency?
- IV. Will the contracted paramedic ambulance provider meet or exceed one of the following standards, whichever is a higher standard: (1) A monthly response time standard for emergency responses equivalent to the local Emergency Medical Services Agency for that area, or (2) Be on scene within ten (10) minutes, 90 percent of the time per month on average?

**87465 INCIDENTAL MEDICAL AND DENTAL CARE SERVICES****87465**

(Continued)

(g)

**PROCEDURE** (Continued)

- V. Will the ambulance provider engage in continuous quality improvement plan discussions with the Residential Care Facility for the Elderly licensee to ensure that residents are receiving the best possible care?
- VI. Will the ambulance provider submit to the Residential Care Facility for the Elderly licensee a monthly response time compliance report that includes **the following data?**
- Date of service
  - Ambulance unit number
  - Time in minutes and seconds that the ambulance is responding to each call from the facility from the time the ambulance provider receives the call to the time that the ambulance arrived at the Residential Care Facility for the Elderly
  - Time in minutes and seconds when the ambulance arrived at the hospital
  - Response level code 3 (red lights and siren) and code 2 (no lights and siren)
  - Transport level code 3 (red lights and siren) and code 2 (no lights and siren)
  - Verification that the ambulance provider meets or exceeds a monthly average of arriving on scene with red lights and siren within the time frame established in III above
- VII. Will the ambulance provider conduct training for the Emergency Medical Technicians and paramedics regarding dementia care and geriatric emergency medical services?
- VIII. Will the ambulance provider offer in-service training to the Residential Care Facility for the Elderly licensee that addresses emergency medical service activation?
- IX. Will the licensee agree to keep documentation available upon request by the Licensing Program Analyst that includes all of the information above?
- X. Will the licensee include information in the admission agreement regarding the use of the contracted ambulance provider and **its** policies and procedures? Is there a provision in the admission agreement that allows the resident to decline the use of the ambulance provider and choose to utilize 9-1-1 instead?

**87465 INCIDENTAL MEDICAL AND DENTAL CARE SERVICES****87465**

(Continued)

**(h) PROCEDURE**

Licensed Residential Care Facilities for the Elderly shall ensure that no dangers or safety hazards are present related to any medical marijuana maintained or stored at the facility. If centrally stored, medical marijuana shall be stored with the same requirements as other medications. Information specified in the resident's records relating to the storage of medical marijuana shall contain as much information as is provided by the recommending physician.

See Regulation Interpretations and Procedures for Residential Care Facilities for the Elderly Section 87458 for more information on medical marijuana.

**(h)(1) POLICY**

Refer to Regulation Interpretations and Procedures for Residential Care Facilities for the Elderly Section 87465(e) concerning prescription blanks.

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

Residents may use private refrigerators for preservation of their medicines unless California Code of Regulations, Title 22, Sections 87465(h)(1)(B) or (C) or 87705(f)(2) 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.

**PROCEDURE**

See California Code of Regulations, Title 22, 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.

**87465 INCIDENTAL MEDICAL AND DENTAL CARE SERVICES****87465**

(Continued)

(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 **California Code of Regulations, Title 22, Section 87465(h)(6)**.

See **California Code of Regulations, Title 22, 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 **California Code of Regulations, Title 22, 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, 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.

**87465 INCIDENTAL MEDICAL AND DENTAL CARE SERVICES****87465**

(Continued)

(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 [and Procedures for Residential Care Facilities for the Elderly](#) Section 87629, Injections, regarding setting up injectable 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****87465**

(Continued)

(h)(6)

**PROCEDURE**

See **California Code of Regulations, Title 22, Section 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).