

EVALUATOR MANUAL TRANSMITTAL SHEET

Distribution:

- All Day Care Evaluator Manual Holders
 All Residential Care Evaluator Manual Holders
 All Evaluator Manual Holders

Transmittal No.

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Subject:

APX - RCFE: 1998 Chaptered Legislation and Implementation

(Appendix Tab A - Residential Care Facilities for the Elderly)

Reason For Change:

This transmits summaries of legislation chaptered in 1998 affecting Residential Care Facilities for the Elderly. The summaries are divided into two sections as follows:

- I. Action Required - Interim instructions are provided and will be incorporated into the appropriate Evaluator Manual section as soon as possible.
 - Deferred Until Further Notice - No action required at this time pending further instructions.
- II. Information Only - No action required by CCLD.

An index is attached to assist staff in locating specific bills. Statutes referenced in this document become operative on January 1, 1999, unless otherwise indicated. Additionally, specific bill summaries may include pertinent attachments.

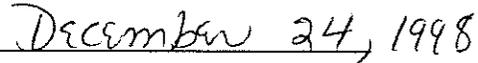
Filing Instructions:

REMOVE

INSERT - the attached pages into Appendix A. Do not remove similar document from previous years.

Approved:


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 Date

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SUMMARY OF 1998 CHAPTERED LEGISLATION

RESIDENTIAL CARE FACILITIES FOR THE ELDERLY

ACTION REQUIRED

BILL NUMBER	SUBJECT	PAGE
Assembly Bill (AB) 1338	Advance Directives in RCFEs	1
AB 1987	Security Windows Bars	1-2
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SB 2194	Sharing Resident's/Client's Medical Information; Criminal Record Clearance Requirements for a Certified Nurse Assistance or Home Health Aide in RCFEs and RCF-CIs	8-10

INFORMATION ONLY - NO ACTION REQUIRED

SB 1073	Adult Day Health Care	11
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ACTION REQUIRED

AB 1338 (ALQUIST), CHAPTER 578, STATUTES OF 1998

Affects: Residential Care Facilities for the Elderly (RCFE)

Subject: Advance Directives

Summary: This legislation adds Section 1569.156 to the Health and Safety Code to require residential care facilities for the elderly licensees to inform residents of their right to make decisions concerning their medical care and to formulate advance directives.

Implementation: To provide consumers with information about advance directives, the Department will utilize an existing brochure developed by the Department of Health Services.

1. A letter will be sent to all RCFE licensees explaining the new requirement. A copy of the brochure will accompany the all licensee letter. Licensees will be informed that stock of the brochure will be made available in the Department's Warehouse, and can be ordered through the normal ordering process.
2. At the time of the annual visit, Licensing Program Analysts should check to ensure that RCFEs are providing copies of the brochure to all new clients and that a supply of brochures is available at the facility.

AB 1987 (ARONER), CHAPTER 343, STATUTES OF 1998

Affects: Community Care Facilities (CCFs), Residential Care Facilities for Persons with Chronic Life-Threatening Illness (RCF-CIs) and Residential Care Facilities for the Elderly (RCFEs).

Subject: Security Window Bars

Summary: This legislation adds Sections 1531.4 and 1568.075 to the Health and Safety Code to prohibit security window bars from being installed or maintained on any facility unless the security window bars meet current state and local requirements for safety release devices.

Implementation:

The legislation is sufficiently clear to implement without regulations. Use the statutory provision in Health and Safety Code Section 1531.4 for Community Care Facilities (CCFs) and Section 1568.075 for Residential Care Facilities for the Chronically Ill (RCF-CIs).

Facilities with security bars on the windows must have safety release devices that are in good working order. The LPA's responsibility is to ensure that the safety release devices are operating properly. At the facility visit, request the licensee/staff to demonstrate that the safety release device on each security window is operable. If the release devices are not in good working order, or if the secured window(s) do not have safety release devices do the following:

1. Cite the facility using the appropriate Health and Safety Code.
2. Immediately notify the local fire jurisdiction.
3. Consult with your licensing supervisor for possible administrative action.

AB 2155 (KEELEY), CHAPTER 660, STATUTES OF 1998

Affects: Residential Care Facilities for the Elderly

Subject: Resident Participation in Decisionmaking

Summary: This legislation adds Section 1569.80 to the Health and Safety Code to allow a resident of an residential care facility for the elderly, or the resident's representative, or both to participate in decisionmaking regarding the care and services to the resident. Additionally, the statute requires the licensee to ensure that a written record of care is prepared and used to determine the care and services provided to the resident.

Implementation:

Until regulations are developed, use Section 1569.80 of the Health and Safety Code as authority for citations:

1. During the annual visit, Licensing Program Analyst should check to ensure that either prior to or within two weeks of a resident's admission, the resident's care is discussed and planned at a meeting attended by the resident, the resident's representative, if any; a member of the facility's staff, and if applicable, a representative of the home health agency. The meeting is to include a written record of the care the resident will receive. The written record is to be used to determine the care and services to be provided to the resident.
2. Check for documentation that the written record is reviewed, and if necessary, revised, at least once every 12 months or upon a significant change in the resident's condition. The review is to take place at a meeting including the resident, the resident's representative, if any; a member of the facility's staff, and if applicable, a representative of the home health agency.

AB 2686 (MAZZONI), CHAPTER 945, STATUTES OF 1998

Affects: Residential Care Facilities for the Elderly
Adult Residential Facilities
Residential Care Facilities for the Chronically III

Subject: Facilities Exempt from the Licensing Requirements

Summary: This legislation adds Sections 1505 and 1568.03 to the Health and Safety Code to exempt from licensure, any housing project for elderly or disabled persons, or both, that meets specified federal requirements and where supportive services are made available to residents under certain circumstances.

Implementation:

The Policy Development Bureau is developing Evaluator Manual information for determining exemption status. In the interim, if a question arises regarding HUD housing, contact the Policy Development Bureau.

SB 411 (PEACE), CHAPTER 36, STATUTES OF 1998

Affects: Adult Residential Facilities, Residential Care Facilities for the Elderly

Subject: Renewal Dates for Administrator Re-certification

Summary: Certificates issued to new administrators expire every two years on the anniversary date of the initial issuance of the certificate. Any person becoming a certified administrator on or after January 1, 1999 shall have a one-time irrevocable election to have the re-certification date either on the date two years from the date of issuance of the certificate or on the individual's birthday during the second calendar year following certification.

Implementation:

1. The administrator Certification Section (ACS) staff will develop a notice to inform individuals applying for certification on and after January 1, 1999 of their right to elect a renewal date as specified above for re-certification.
2. The notice will be mailed to the applicants for initial certification on or after January 1, 1999, and will include a means for applicants to make their elections and forward those elections to the ACS for processing and issuance of their certificates.

SB 478 (HAYNES), CHAPTER 179, STATUTES OF 1998

Affects: Residential Care Facilities for the Elderly (RCFEs)

Subject: Continuation of License under Emergency Conditions

Summary: This legislation amends Health and Safety Code Section 1569.193 to revise the reporting requirements for a licensee's death. When a licensee dies, if specified conditions are met, a relative or other unrelated adult may be designated as the responsible party to continue operation of the facility. The designee must now report the licensee's death by the close of business of the department's next business day following the licensee's death.

Implementation: This statute is sufficiently clear to implement without regulations. Use the statutory provision in Health and Safety Code Section 1569.193 as the authority for implementation. If the designee fails to report the death as required, cite the designee using H&S Code Section 1569.193(b).

SB 933 (THOMPSON), CHAPTER 311, STATUTES OF 1998

Affects: Residential Care Facilities for the Elderly, (also affects Community Care Facilities, Residential Care Facilities for the Chronically Ill, Child Care Centers, and Family Child Care Homes)

Subject: Criminal Record Clearances and Foster Care Program Reform

Summary: The focus of SB 933 was primarily group homes. However, it did make some significant changes to the licensing and monitoring of all facilities licensed by the Community Care Licensing Division (CCLD). Not all of the changes are effective at the same time. It is, therefore, particularly important to pay attention to the effective dates provided below. The changes that affected facilities for the elderly fall under the general headings of: a) Criminal Record Clearances; b) Additional Requirements for Licensees Who Are Corporations, and c) Improper Use of Facility/Client Funds. Also included for your information are SB 933 provisions which are deferred until further notice. Licensing staff will be provided specific implementation instructions when these provisions are implemented.

Specific Changes:

a) Criminal Record Clearances

The following changes were effective October 17, 1998. These changes along with specific implementation instructions were sent to field staff by memorandum on October 5, 1998. (Copy attached)

- Volunteers must be fingerprinted.

- Fingerprints must be submitted prior to the individual's employment, residence or initial presence in the facility.
- An immediate civil penalty of \$ 100 per violation may be assessed for failure to submit fingerprints as required.
- CCLD may consider criminal convictions from another state or federal court, as if the offense occurred in California.
- A request to transfer a criminal record clearance from one CCLD facility to another CCLD licensed facility must be in writing, accompanied by a copy of a photo identification.

Effective January 1, 1999, all persons required to submit fingerprints to the Department of Justice must also submit fingerprints to the Federal Bureau of Investigation.

Implementation:

Until regulations are developed, use the statutory provisions in Health and Safety Code Section 1569.17 as the citing authority. Additionally, use the implementation instructions contained in the October 5, 1998 memo.

b) Additional Requirements for Licensees Who Are Corporations

Effective August 18, 1998, Health and Safety Code Section 1569.1515 was added to place additional requirements on applicants and licensees that are corporations.

- The applicant/licensee shall provide a list of all board members, executive directors or officers describing all their past and present community care facility associations. Such associations will include: licensees themselves, employees of a licensed facility, a member of a board overseeing a licensed facility, and an executive director or officer of a corporation involved with a licensed facility.
- An individual is ineligible to serve as a board member, executive director or officer of a corporation for the following reasons: the Department has revoked or denied a license held by that individual within the preceding two years; the Department has ordered the denial or revocation of a foster family home certificate held by the individual within the preceding two years; the Department has excluded or removed the individual and the individual has not been reinstated.
- Prior to initiating administrative action, the Department shall notify the facility, in writing, of the person's ineligibility, giving them opportunity to take their own action.
- When the ineligible person has client contact, the facility shall remove the individual from the facility upon notification.

- When the ineligible person does not have client contact, the facility shall remove the individual 15 days after notification.
- When a corporate applicant has a board member, executive director, or officer that is ineligible to serve, the Department shall deny the application.
- When a corporate licensee retains a board member, executive director, or officer that is ineligible to serve, the Department shall revoke the license.

Implementation:

1. Until regulations are developed, use the statutory provisions contained in the Health and Safety Code 1569.17 as the authority for citation.
2. The Administrative Organization form (LIC 309) will be amended to require corporate applicants/licensees to provide the necessary information. Until the form is amended, please use the attached supplement (LIC 309A) to document all community care facility affiliations.
3. This process shall be phased in. Licensing analyst should take copies of the LIC 309A to the next annual visit.

c) Improper Use of Facility/Client Funds

Effective August 18, 1998, Health & Safety Code Section 1569.50, 1569.58 were amended to allow the Department to deny or revoke an elderly facility license for acts of financial mismanagement. Such acts include: a) the improper use or embezzlement of client monies and property; b) the fraudulent appropriation of facility monies or property for personal gain; or, c) willful or negligent failure to provide services.

Health and Safety Code Sections 1569.50, 1569.58 were also amended to allow the Department to exclude persons from the facilities for acts of financial mismanagement.

Implementation:

1. Licensing staff should continue to follow existing guidelines regarding administrative actions and case referrals to the Legal Division.
2. When an individual must be excluded, the Department must notify the facility, in writing. The individual has appeal rights as specified by law, which is the same as the existing employee exclusion appeal rights.
3. The Department may require immediate removal pending the final decision, when necessary, to protect the clients or residents.

Action Deferred Until Further Notice:

Affects: Residential Care Facilities for the Elderly, (also affects Community Care Facilities, Residential Care Facilities for the Chronically Ill and Child Care Facilities)

Subject: Criminal Record Clearances and Foster Care Program Reform

1. Health and Safety Code Section 1522.02 has been amended to allow CDSS to create a substitute employee registry. The registry may submit fingerprint cards and child abuse index information for persons working at more than one CCLD licensed facility.
2. Health and Safety Code Section 1522.04 was amended to require criminal record clearances before employment, residence or initial presence in a facility when Live Scan was fully operational.

SB 1630 (ROSENTHAL), CHAPTER 306, STATUTES OF 1998

Affects: Residential Care Facilities for the Elderly

Subject: Consumer Access to Public Information

Summary: Health and Safety Code Section 1569.38 was amended to require residential care facilities for the elderly to place in a conspicuous place copies of all licensing reports issued by the Department within the preceding 12 months. Health and Safety Code Section 1569.61 was added to require the Department to develop and maintain at each district office a file for each RCFE that contains all non-confidential documents. This information must be available for immediate access upon the request of any consumer.

Implementation: This statute is sufficiently clear to implement without regulations. Use the statutory provision in Health and Safety Code Sections 1569.38 and 1569.61 as the authority for implementation. At the next annual visit, licensing staff should ensure the following for implementation of Section 1569.38:

1. Ensure that the licensee has placed copies of all licensing reports, except unfounded complaint reports, from the previous 12 months in a conspicuous place.
2. Request to see a copy of the facility's written statement that informs the resident and the resident's responsible person that a copy of the inspection reports are available at the district office for review. This statement may be included on the admission agreement.

3. As of January 1, 1999, ensure district offices maintain public files of non-confidential information for each facility. Information in the public files must be immediately available upon request.
4. To ensure compliance with Section 1569.61, District Offices should use the existing instructions in the District Office Support Manual for the public folder. Using these instructions will ensure the public immediate access to the public part of the file upon request.

SB 2194 (WRIGHT), CHAPTER 831, STATUTES OF 1998

Affects: Adult Residential Facilities (ARFs), Social Rehabilitation Facilities (SRFs), Adult Day Care Facilities (ADCFs), and Adult Day Support Centers (ADSCs)]; Residential Care Facilities for the Elderly (RCFEs); and Residential Care Facilities for the Chronically Ill (RCFCIs)

Subject: Criminal Record Clearance and Sharing Resident's/Client's Medical Information

Summary: This legislation amends Section 1569.17 of the Health and Safety code to provide that any nurse or nurse assistant or home health aide meeting the criminal record clearance requirements for employment in facilities licensed by the State Department of Health Services would be deemed to meet criminal records clearance requirements for the California Department of Social Services. Also, Sections 1507.1, 1568.02, and 1569.725 are amended to authorize HHAs to share client's medical information with Adult Community Care Facilities, RCFCIs and RCFEs.

Implementation:

a.) Criminal Record Clearance Requirements (Section 1569.17)

As of January 1, 1999, the following procedures should be followed:

1. A CNA or a HHA who provides client assistance must provide a copy of his or her current certification with Department of Health Services (DHS). This certification card indicates if a background check has been completed.
2. Only CNAs or HHAs certified on or subsequent to July 1, 1998 have been fingerprint checked; therefore, any HHA certified before July 1, 1998, must undergo a new criminal record background check with DHS if they are to be working in any California Department of Social Services (CDSS) facility as a caregiver.
3. A \$100 Civil Penalty per violation will be assessed for the licensee's use of a home health aide or nursing assistant who does not have a criminal record background clearance or exemption through DHS;

4. It is the licensee's responsibility for maintaining documentation of CNA's or HHA's clearance or exemption, and the facility must maintain a copy of the certification card on file as long as care is being provided by the CNA or the HHA.

b.) HHA and RCFE Sharing of Client Medical Information

Use the statutory provisions in Health and Safety Code Sections 1569.725 as the authority for citation pending regulations. Community Care Licensing will develop regulations in consultation with the State Department of Health Services and persons representing home health agencies. and RCFEs. This legislation builds on last year's legislation, SB 1231, which authorized an RCFE to provide incidental medical care through an HHA, when certain conditions were met. Policies and procedures were developed in coordination with the California Department of Health Services to ensure appropriate and safe care for residents. One additional procedure was added below as a result of SB 2194.

HHA Responsibilities (Under jurisdiction of the Department of Health Services)

- The HHA may share resident information with the licensee of the RCFE relative to the resident's medical condition and the care and treatment they will be providing to the resident.
- Upon receipt of the referral, contact the licensee to schedule an initial visit.
- Complete a patient assessment and develop a written plan of care. The plan will document treatment and/or therapy; facility staff training, when necessary; identify any special dietary needs; and explain medical equipment instructions, etc.
- Meet with the client/resident, their representative (conservator or responsible person) when applicable, and the licensee to discuss the plan of care and determine what impact, if any, the plan will have on the client/resident, facility staff, and/or other facility clients/residents.
- Share client/resident information with the licensee of the adult CCF or RCF-CI relative to the client's/resident's medical condition and the care and treatment they will be providing to the client/resident.
- Schedule and conduct training for facility staff, when training is needed, including the operation and maintenance of medical equipment.
- Have the plan of care signed by the client/resident, their representative, the licensee and themselves (HHA staff person). Each party should receive a copy of the signed document.
- Prior to the final treatment or therapy visit, contact the client/resident, their representative, and the licensee to schedule an exit interview.

- Keep the client/resident, their representative and the licensee apprised of any continuing treatment requirements, precautions, dietary restrictions, etc. that the client/resident should follow or that the facility staff should be aware of. These instructions should be in writing, and a signed copy should be given to each party.

INFORMATION ONLY – NO ACTION REQUIRED

SB 1073 (VASCONCELLOS), CHAPTER 728, STATUTES OF 1998

Affects: Adult Day Health Care Facilities

Subject: Adult Day Health Care as a Separate Program

Summary: This legislation amends Health and Safety Code Section 1585.2 to require any operator of a health facility licensed to provide adult day health care to provide that care as a separate program as determined by the State Department of Health Services. The program can be in a separate freestanding facility or in a distinct part of the clinic or community care facility in the case of a joint adult day health and social day care program. The legislation also requires the State Department of Health Services to assume primary responsibility in exploring dual licensure processes for combined adult day health care facilities and social day care facilities.