

EVALUATOR MANUAL TRANSMITTAL SHEET

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| <u>Distribution:</u> <input type="checkbox"/> All Day Care Evaluator Manual Holders <input checked="" type="checkbox"/> All Residential Care Evaluator Manual Holders <input type="checkbox"/> All Evaluator Manual Holders | <u>Transmittal No.</u> 99 APX-08 <u>Date issued.</u> December 1998 |
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Subject:

APX - ACCF: 1998 Chaptered Legislation and Implementation

(Appendix Tab A - Adult Community Care Facilities and Residential Care Facilities for the Chronically Ill.)

Reason For Change:

This transmits summaries of legislation chaptered in 1998 affecting Adult Community Care Facilities and Residential Care Facilities for the Chronically Ill. 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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December 24, 1998
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SUMMARY OF 1998 CHAPTERED LEGISLATION

ADULT COMMUNITY CARE FACILITIES AND RESIDENTIAL CARE FACILITIES FOR THE CHRONICALLY ILL

ACTION REQUIRED

| BILL NUMBER | SUBJECT | PAGE |
|-------------------------|---|------|
| Assembly Bill (AB) 1987 | Security Window Bars | 1 |
| AB 2686 | Facilities Exempt from the Licensing Requirements | 2 |
| Senate Bill (SB) 411 | Renewal Dates for Administrator Recertification | 2 |
| SB 933 | Criminal Record Clearances and Foster Care Program Reform | 3-6 |
| SB 1068 | Criminal Record Clearance for Nurse Assistants, Home Health Aides and Social Rehabilitation Staff | 6-7 |
| SB 1361 | Secured Perimeter Fences and Egress Control Devices in Adult Day; Care and Adult Day Support Centers | 7 |
| SB 2194 | Home Health Agencies (HHAs) and (Adult CCFs, RCFEs, or RCF-CLs) Sharing Resident's/Client's Medical Information; Criminal Record Clearance Requirements for a Certified Nurse Assistance or Home Health Aides in RCFEs or RCF-Cis | 8-10 |

INFORMATION ONLY – NO ACTION REQUIRED

* There are no "Information Only" bills for Adult CCFs and RCF-CIs.

ACTION REQUIRED

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

Affects: Community Care Facilities (CCF), Residential Care Facilities for Persons with Chronic Life-Threatening Illness (RCF-CI) and Residential Care Facilities for the Elderly (RCFE).

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 2686 (MAZZONI), CHAPTER 945, STATUTES OF 1998

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

Subject: Facilities Exempt from 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 Recertification

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 recertification 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 recertification.
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 933 (THOMPSON), CHAPTER 311, STATUTES OF 1998

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

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 affect Community Care Facilities and Residential Care Facilities for the Chronically Ill fall under the general headings of: a) Criminal Record Clearances; b) Additional Requirements for Licensees Who Are Corporations; c) Improper Use of Facility/Client Funds, and d) Reporting Requirements. Also included for your information are SB 933 provisions which are deferred until further notice. Licensing staff will be provided specific implementation instructions when the provisions are implemented.

Specific Changes:

a) Criminal Record Clearances

The following changes for the Residential Care Facilities for the Chronically Ill 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 1568.09 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 1520.11 and 1568.042 were 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 shall include: being licensed themselves, being employed by a licensed facility, being a member of a board overseeing a licensed facility, and being 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:

Until regulations are developed, use the statutory provisions contained in the Health and Safety Code as the authority for implementation. The Administrative Organization form (LIC 309) shall 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.

c) Improper Use of Facility/Client Funds

Effective August 18, 1998, Health & Safety Code Section 1550, 1558 was amended to allow the Department to deny or revoke Community Care Facilities and Residential Care Facilities for the Chronically Ill 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 1558 and 1558.1 were also amended to allow the Department to exclude persons from the care 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 rights.
3. The Department may require immediate removal pending the final decision, when necessary to protect the clients or residents.

d) Reporting Requirements

Effective August 18, 1998, Health and Safety Code Section 1538.5(a)(1) was amended to require community care facility operators to send copies of substantiated complaints to the members of the facility's board of directors.

Implementation:

1. Check to see that the facility is making a reasonable effort to transmit copies of the licensing reports of substantiated complaints to the required parties. For example, the facility may maintain a file of the substantiated complaints and proof of transmittal by certified mail to meet this requirement. Unless the LPA believes the facility is not making an effort to comply with Section 1538(b), it is not necessary for the LPA to double-check the licensing office's files to ensure the facility is making all required reports available for public review.
2. When it is clear that a licensee is not aware of these new requirements, inform the licensee of the new law and develop a plan of correction to document this action.

Action Deferred Until Further Notice:

Affects: Community Care Facilities, Residential Care Facilities for the Chronically Ill, (also affects Residential Care Facilities for the Elderly 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 1522.1 has been amended to require the Department of Justice to transmit to CDSS subsequent child abuse reports for persons that have required a child abuse index check.
3. Health and Safety Code Section 1522.04 is amended to require criminal record clearances before employment, residence or initial presence in a facility when Live Scan is fully operational.
4. Existing Health and Safety Code Section 1538.5 has been amended to allow the Department to send copies of certain licensing reports to members of the facility's board of directors.

SB 1068 (CAMPBELL), CHAPTER 898, STATUTES OF 1998

Affects: Adult Residential Facilities, Social Rehabilitation Facilities, Adult Day Care Facilities, and Adult Day Support Centers.

Subject: Criminal Record Clearance for Nurse Assistants, Home Health Aides and Social Rehabilitation Staff.

Summary: Health and Safety Code Section 1522 (b)(3) was amended to allow nurse assistants or home health aides who have a criminal record clearance from the Department of Health Services to be accepted as cleared by the California Department of Social Services.

In addition, Health and Safety Code Section 1522(b)(4) was amended to require criminal record clearance for staff members of social rehabilitation facilities.

Implementation:

a) CNAs and HHAs

1. The CNAs or HHAs must provide one copy of their certification to the licensee before providing care in the facility. The licensee will keep the copy on file as long as care is being provided at the facility.
2. Community Care Facilities were notified by letter of the changes brought about by AB 1068. Cite Health and Safety Code section 1522 (b)(3) as your authority for requiring licensee's to maintain a copy of a CNAs or HHAs certification on file to verify fingerprint clearance.

b) Social Rehabilitation Facilities

1. AB 1068 deleted the exception that staff of Social Rehabilitation Facilities had from the criminal record clearance requirement. Effective September 27, 1998, California Code of Regulations, Title 22, Section 80019 now applies to staff of these facilities.
2. Cite Health and Safety Code Section 1522 (b)(4) as your authority for requiring staff or employees who have frequent and routine contact with clients to be criminal record cleared.

SB 1361 (ALPERT), CHAPTER 729, STATUTES OF 1998

Affects: Adult Day Care Facilities
Adult Day Support Centers

Subject: Secured Perimeter Fences and Egress Control Devices

Summary: Section 1531.2 is added to the Health and Safety Code and allows Adult Day Care Facilities and Adult Day Support Centers that provide care and supervision to adults with Alzheimer's and other dementia to install, for clients' safety and security, secured perimeter fences or egress control devices. This legislation is not operative until the Department files emergency regulations with the Secretary of State.

Implementation:

No actions until emergency regulations are developed.

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

Affects: Adult Residential Facilities, Social Rehabilitation Facilities, Adult Day Care Facilities, and Adult Day Support Centers, Residential Care Facilities for the Elderly, and Residential Care Facilities for the Chronically III

Subject: Sharing Resident's/Client's Medical Information.

Summary: This legislation adds Sections 1507.1 and 1568.02 to the Health and Safety Code, to specify that effective January 1, 1999, adult CCFs may permit incidental medical services to be provided through a home health agency when specified conditions are met. Client/resident information may be shared between the HHA and the adult CCF, RCFE, or RCF-CI, relative to the client's/resident's medical condition and the care and treatment provided to the client/resident by the HHA.

Implementation:

Use the statutory provisions in Health and Safety Code Sections 1507.1 and 1568.02 as the authority for citation. Community Care Licensing will develop regulations in consultation with the State Department of Health Services and persons representing home health agencies and adult CCFs and RCF-CIs. In the meantime, the following policies and procedures, developed in coordination with the California Department of Health Services, must be followed. Licensees may share this material with home health agencies (HHAs) providing services to adult CCF clients and RCF-CI residents.

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

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

HHA staff persons are responsible for reviewing the regulations for adult CCFs and RCF-CIs prior to providing care.

- 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.

2) Facility Staff Responsibilities

- The licensee will ensure that the HHA has a copy of the regulations for adult CCFs and RCF-CIs.
- The licensee will ensure that any nurse assistant or home health aide who will be providing services have been fingerprint cleared.
- The licensee will participate in the client's/resident's initial meeting with the HHA staff person. At that meeting, the HHA will apprise the facility of the treatment duration, and any modifications that will be required in the client's/resident's care plan, dietary needs, transportation needs, medical equipment needs, personal care needs, etc.
- If the licensee agrees to retain the client/resident and the client's/resident's needs can be met by the facility, the licensee must comply with all tasks agreed upon in the plan of care.
- The licensee will maintain a copy of the care plan and all instructions and amendments in the client's/resident's facility file.
- The licensee will contact the HHA staff person with questions or concerns about the treatment being delivered; observed changes in the client's/resident's condition; or problems with medical equipment, etc.
- Any questions or concerns about the quality of treatment provided by an HHA staff person will be directed to the local district office of the Department of Health Services' Licensing and Certification Program.

3) Mutual Adult CCF or RCF-CI/HHA Responsibilities

- At any time that the licensee, the HHA staff person, the client/resident, the client's/resident's representative (when applicable), or the client's/resident's physician determines that changes in the client's/resident's condition require health related services. That cannot be provided in the facility, or the client's/resident's care is having a negative impact on the care of other clients/residents in the facility, relocation of the client/resident to a more appropriate placement will be made.
- The HHA staff person and the licensee will maintain active communications. The HHA will keep the licensee informed of any changes in the plan of care, in writing; or any complications that have occurred; or issues that must be resolved.
- The HHA staff will not perform any personal care activity that the facility staffs are required by regulation to perform.
- The HHA staff will be advised to report any concerns they may have about the client's/resident's care within the facility to the local CCLD District Office.

If in the Department's judgement evidence shows that a client/resident is receiving inadequate care from an HHA in an adult CCF or RCF-CI, then that is evidence that the facility lacks capacity for providing the needed care. Those clients/residents receiving the HHA care must be issued a Health Condition Relocation Order using existing regulations and procedures.