
EVALUATOR MANUAL TRANSMITTAL SHEET

<u>Distribution:</u> <input type="checkbox"/> All Child Care Evaluator Manual Holders <input checked="" type="checkbox"/> All Residential Care Evaluator Manual Holders <input type="checkbox"/> All Evaluator Manual Holders	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;"><u>Transmittal No.</u></td> </tr> <tr> <td style="padding: 2px;">04APX-02</td> </tr> <tr> <td style="padding: 2px;"><u>Date Issued</u></td> </tr> <tr> <td style="padding: 2px;">February 2004</td> </tr> </table>	<u>Transmittal No.</u>	04APX-02	<u>Date Issued</u>	February 2004
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Subject:

2003 Chaptered Legislation
 Appendix A – Residential Care Facilities for the Elderly

Reason For Change:

The previous version (03APX-12) has been revised.

This transmits summaries of legislation chaptered in 2003 affecting Residential Care Facilities for the Elderly. The summaries are divided into two sections as follows:

1. Immediate Action Required – Interim instructions are provided.
2. Information Only – No action required by CCLD.

An index is attached to assist staff in locating specific bills. Statutes referenced in this document became operative on January 1, 2004.

Filing Instructions:

- REMOVE – Remove ONLY (03APX-12)
- INSERT – Insert the attached pages into Appendix A. Do not remove similar documents from the previous years.
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Approved:

Original signed by C. McCoy

on 2-6-04

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 Date

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**SUMMARY AND IMPLEMENTATION PLANS
2003 CHAPTERED LEGISLATION**

**RESIDENTIAL CARE FACILITIES
FOR THE ELDERLY**

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Unless otherwise noted, all new legislation becomes effective on January 1, 2004.

When conducting visits, LPAs should ensure that providers are aware of any new requirements.

ACTION REQUIRED

AB 1166 (BERG), CHAPTER 312, STATUTES OF 2003

Affects: Residential Care Facilities for the Elderly (RCFEs) and Adult Residential Facilities (ARFs)

Subject: Terminally Ill Persons

Summary: This legislation amends Sections 1507.3 and 1569.73 of the Health and Safety Code to permit facilities, with hospice waivers, to contact the hospice agency in cases of life-threatening emergencies involving the hospice client/resident.

Effective January 1, 2004, licensees and/or facility staff may contact the hospice agency in lieu of calling emergency response services if all of the following conditions are met:

1. The client/resident is receiving hospice services from a licensed hospice agency.
2. The client/resident has completed an advance health care directive, requesting to forego resuscitative measures.
3. The facility has documented that facility staff have received training from the hospice agency on the expected course of the client's/resident's illness and the symptoms of impending death.

This legislation also permits individuals already receiving hospice care services to be admitted to an ARF. This statutory change makes the Community Care Facilities Act consistent with the Residential Care Facilities for the Elderly Act.

Implementation:

This legislation is self-implementing and regulations will be amended to reflect the 9-1-1 option and the deletion of the residency requirement. In the interim, ARFs should not be cited for admitting an individual already receiving hospice care services provided the licensee has obtained a hospice care waiver.

RCFEs and ARFs have the option of contacting the hospice agency in lieu of 9-1-1 for hospice clients/residents if all three conditions above are met. Complaints alleging a failure to contact 9-1-1 for a hospice client/resident should be investigated using the above criteria. If all of the specified conditions are not met, cite the licensee using the appropriate Health and Safety Code Section.

ACTION REQUIRED

SB 211 (Dunn), CHAPTER 211, STATUTES OF 2003

Affects: Residential Care Facilities for the Elderly (RCFEs). Does not apply to facilities that have obtained a certificate of authority to offer continuing care contracts.

Subject: Admission Agreements

Summary: This legislation adds Health and Safety (H&S) Code Sections 1569.880 through 1569.888 to ensure that RCFE admission agreements do not violate resident's rights and to provide residents with the information necessary to make informed choices. The following description of these provisions includes general information, and requirements to be included, or excluded in the agreement as specified. Many requirements overlap existing statutes or regulations in Title 22 California Code of Regulations (CCR) chapter 6. The applicability of some requirements will depend on the type of services provided by the facility.

H&S Code Section 1569.880 defines an admission agreement to include all documents the resident, or the resident's representative, must sign to be admitted to the facility (consistent with H&S Code Section 1569.154). It may not include any written attachment containing any prohibited provision.

H&S Code Section 1569.881 requires that blank complete copies of the admission agreement be immediately available to the public, subject to facility cost, and copying/mailling time. A complete copy of the agreement, or notice of its availability from the facility, must be placed in a conspicuous location accessible to public view in the facility.

The admission agreement must comply with additional provisions outlined below:

- Be written in clear, coherent and unambiguous language, using words with common and everyday meaning. It must be appropriately divided with each section appropriately captioned. (H&S Code Section 1569.882(b))
- Be printed in black ink, 12-point type size, on plain white paper using one side of the paper. (H&S Code Section 1569.882(a), consistent with H&S Code Section 123222.1 requiring RCFEs to use 12-point font for information regarding residents' rights and responsibilities)
- Not include any provision(s) of unlawful waivers of facility liability for the residents' health and safety or personal property. (H&S Code Section 1569.883(a), consistent with H&S Code Section 1569.154 and CCR Section 87727.1(a)(3) regarding the residents' personal property)
- Not include any provision that the licensee knows, or should know is deceptive or unlawful. (H&S Code Section 1569.883(b))

- Include a comprehensive description of any items and services provided under a single fee, such as a monthly fee for room, board, combined with other items and services. (H&S Code Section 1569.884(a), consistent with CCR Sections 87222(a)(2) and 87568(c)(1)-(2))
- Include a comprehensive description of, and the fee schedule for, all items and services not included in a single fee. The agreement also must indicate that the resident will receive a monthly statement itemizing all separate charges. (H&S Code Section 1569.884(b), consistent with CCR Section 87568(c)(3))
- Authorize any separate charge for any additional item or service. If additional services are available for purchase through the facility that were not available at the time the agreement was signed, a list of these services and charges must be provided to the resident or the resident's representative, who must sign and date a statement acknowledging the acceptance or refusal to purchase them. (H&S Code Section 1569.884(c), consistent with CCR Section 87568(d))
- Include a statement acknowledging the acceptance or refusal to purchase the additional services., signed and dated by the resident, or the resident's representative and attached to the agreement. (H&S Code Section 1569.884)
- Explain the use of any third-party services within the facility that are related to the resident's service plan, including, but not limited to, ancillary, health, and medical services, how they may be arranged, accessed, and monitored, along with any restrictions on third-party services, and who is financially responsible for the services. (H&S Code Section 1569.884(d), consistent with CCR Section 87568(d))
- Include a comprehensive description of billing and payment policies and procedures. (H&S Code Section 1569.884(e), consistent with CCR Section 87568(c)(3))
- Include the conditions under which rates may be increased, pursuant to H&S Code section 1569.655 that requires 60 day's written notice, stating the amount of, the reason for, and a general description of, the increase, except when due to a change in the level of the resident's care. (H&S Code Section 1569.884(f), reinforcing H&S Code Section 1569.655(a))
- Include the facility's policy concerning family visits and other communication with residents, pursuant to H&S Code Section 1569.313 that requires this information to be stated on either the client information form or the admission agreement. (H&S Code Section 1569.884(g), reinforcing H&S Code Section 1569.313 and restating CCR Section 87568(c)(9))
- State the facility's policy concerning refunds. (H&S Code Section 1569.884(h), consistent with H&S Code Section 1569.655(b) concerning preadmission fees, and restating CCR section 87568(c)(5))

- State the conditions under which the agreement may be terminated. (H&S Code Section 1569.884(i), consistent with CCR Sections 87568(c)(8), (c)(10), and 87568(h))
- Ensure that when referring to a resident's obligation to observe facility rules, those rules must be reasonable, with a facility procedure for suggesting rule changes. (H&S Code Section 1569.885(a), consistent with CCR Section 87568(c)(7))
- Specify that a copy of the facility grievance procedure for resolution of a resident's complaints shall be available to the resident or the resident's representative. (H&S Code Section 1569.885(b))
- Inform residents of their right to contact the State Department of Social Services, the long-term care ombudsman, or both, regarding grievances against the facility. (H&S Code Section 1569.885(c), consistent with H&S Code Section 1569.35(a))
- Include as an attachment a copy of any applicable resident's rights specified by law or regulation. (H&S Code Section 1569.885(d), consistent with CCR Section 87572(b) and CDSS form admission agreement LIC 604A)
- Not include any ground for involuntary transfer or eviction unless those grounds are specified under state law or regulation. List the justifications for eviction permissible under state law or regulation, exactly as worded in the applicable law or regulation, except to the extent of avoiding confusion. Include an explanation of the resident's right to notice prior to any involuntary transfer, discharge, or eviction, the resident's process to appeal, and a description of the relocation assistance offered by the facility. (H&S Code Section 1569.886, consistent with H&S Code Section 1569.54 and CCR Sections 87568(c)(8), (c)(10) and (h))

H&S Code Section 1569.887 requires that the agreement shall be

- Signed and dated by the resident or resident's representative acknowledging the contents;
- Retained in the resident's file, with all subsequent modifications;
- Copied and provided to the resident or resident's representative; and
- Reviewed by the licensing agency at the time of the compliance visit and in response to a complaint involving the admission agreement.

(H&S Code Section 1569.887, consistent with CCR Sections 87568(e)&(f), and 87570(b)(13))

Implementation:

The legislation is enforceable without new regulations. The H&S Code should be used as the citing authority, along with any corresponding regulation.

The bulleted items may be added to any existing checklist for reviewing the facility's admission agreement. The admission agreement currently available for optional use by licensees (LIC 604A 5/00) will be updated to reflect these and other recent changes.

For applications granted after January 1, 2004, these provisions must be reviewed as part of the plan of operation under CCR Section 87218(a)(16). For facilities already licensed, the Department must review the admission agreement at the time of the compliance visit, and in response to a complaint involving the admission agreement.

ACTION REQUIRED

SB 540 (SOTO), CHAPTER 322, STATUTES OF 2003

Affects: Residential Care Facilities for the Elderly (RCFE)

Subject: Disclosure of Special Services for Persons with a Health Related Condition

Summary: This legislation adds Section 1569.628 to the Health and Safety (H&S) Code. This section applies to licensees of an RCFE that advertise special care, programming, or environments for persons with a health related condition, except for residents requiring 24-hour, skilled nursing or intermediate care or who are bedridden, as specified in Section 1569.72. The licensee must provide an accurate written narrative description of these programs and services to each resident prior to admission. All reasonable efforts must be made to communicate information in the narrative to a prospective resident, including reading the description out loud if the individual is unable to read.

IMPLEMENTATION:

This statute is self-implementing although regulations may be developed. During the next facility visit, notify the administrator of the new disclosure requirements and reference the notification on the licensing report.

Disclosure Requirements:

Facilities that advertise or promote special care, programming, or environments for persons with a health related condition must maintain advertising material on file at the facility. In addition, licensees must maintain documentation showing that the written narrative summary is provided to any individual requesting information about the services being advertised. The LPA must review this advertising material to ensure that it is consistent with the facility's plan of operation submitted to the licensing agency pursuant to CCR section 87222(a)(2), and that the facility is able to provide the promoted services within the confines of the license. H&S Code Section 1569.72 does not allow facilities to offer care and/or services beyond that allowed in regulations (CCR Article 8 Incidental Medical Services, commencing with Section 87700).

ACTION REQUIRED

SB 577 (KUEHL), CHAPTER 878, STATUTES OF 2003

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

Subject: Protection and Advocacy (P&A) Agency

Summary: This legislation amends Section 1798.24b of the Civil Code, and Sections 4514.3, 4900, 4901, 4902, 4903, 4905, and 5328.06 of, and adds Section 4906 to, the Welfare and Institutions (W&I) Code, expanding the non-profit P&A agency's authority and rights to access to facilities, disabled clients/residents and their records.

The expansion is a result of the amended definition of "disability" updating the federal reference to developmental disabilities, adding the federal reference to mental illness, and adding a reference to the federal Americans with Disabilities Act (ADA) and to the California Fair Employment and Housing Act. (W&I Code Section 4900(d) and (i))

Consistent with existing law, if the P&A agency deems there is an imminent risk of harm to a client, the client's and/or facility records must be made available to them within 24-hours of the initial request. For investigations where the P&A agency has deemed there is not an imminent risk of harm, records must be made available within three days of the initial request.

Consistent with existing law, the P&A agency is entitled to view and copy medical records, financial records, monitoring reports, or other reports, prepared or received by a member of the staff of a facility, program or service that is providing care, treatment or services.

Consistent with existing law, the P&A agency has access to records of CCL investigations, including confidential information that is not part of the public file, and of death review teams.

IMPLEMENTATION:

Until training is available, licensing staff will implement as follows:

- Provide P&A with requested documents within 3 business days after the agency makes a written request or, within 24 hours when the agency determines there is a probable cause to believe an immediate hazard exists or there has been a death.
- In the event there is an unusual situation where it may be difficult to produce the requested records within 24 hours, licensing staff will work with the P&A agency to attempt to get an extension.

INFORMATION ONLY - NO ACTION REQUIRED

AB 414 (NAKANO), CHAPTER 305, STATUTES OF 2003

Affects: Residential Care Facilities for the Elderly (RCFE)

Subject: Administrator Certification Training

Summary: This legislation amends Section 1569.616 of the Health and Safety Code, relating to continuing education.

Effective January 1, 2004, no more than one-half of the required 40 hours of continuing education may be satisfied through online courses. This legislation also specifies that the Department may approve and inspect, training programs and continuing education courses, at no charge to the Department and allows the Department to charge the vendor a fee for the review and approval.

AB 528 (MULLIN), CHAPTER 383, STATUTES OF 2003

Affects: Residential Care Facilities for the Elderly

Subject: Sundowning

Summary: This legislation amends Section 1569.2 of the Health and Safety Code to add the term “sundowning” to the list of definitions. It is now defined as a condition in which persons with cognitive impairment experience recurring confusion, disorientation, and increasing levels of agitation that coincide with the onset of late afternoon and early evening.

This legislation also adds Section 1569.7 to “encourage” residential care facilities for the elderly (RCFEs) that serve residents with Alzheimer’s Disease and other forms of dementia to include information on “sundowning” as part of the training for direct care staff and to include in the plan of operation a brief narrative description explaining activities available for these residents.

The language of Section 1569.7 is suggestive and has no enforcement authority. Licensees are not required to provide training on “sundowning” or to include information on specific activities for individuals with “sundowning”.

INFORMATION ONLY - NO ACTION REQUIRED

AB 786 (DAUCHER AND SIMITIAN), CHAPTER 346, STATUTES OF 2003

Affects: Residential Care Facilities for the Elderly (RCFEs)

Subject: Home Assessment Pilot Project: San Mateo County

Summary: This legislation authorizes a pilot project in San Mateo County to test the use of a uniform, automated screening and eligibility assessment instrument—the Minimum Data Set-Home Care (MDS-HC)—by specified home- and community-based programs serving elderly and disabled persons. Licensed home health agencies would be exempt. The use of the MDS-HC would provide specific information about clients' functional needs and abilities, and make it easier to compare long-term care client data. The pilot project would end December 31, 2008; a report to the Legislature and the Long-Term Care Council would be due May 31, 2009; and the bill would sunset July 1, 2009.

AB 1752 (Committee on Budget), CHAPTER 225, STATUTES of 2003

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

Subject: License Fee Increases, Required Annual Visits and Random Sample Visits

Summary: This legislation amends Sections 1523.1, 1534, 1568.05, 1569.185, 1569.33, 1596.803, 1596.871, 1597.09, 1597.55a and 1597.55b of the Health & Safety Code relating to fees and visits. The provisions are as follows:

- Increased annual license fees and eliminated aggregate fees for licensees with multiple facilities.
- Annual visits will be made to facilities when a license is on probation; when the terms of agreement in a facility compliance plan require an annual evaluation; when an accusation against a licensee is pending; and when a facility requires an annual visit as a condition of receiving federal financial participation.
- Annual visits will also be made to ten percent of the total number of licensed facilities identified using a random sample methodology.

INFORMATION ONLY - NO ACTION REQUIRED

SB 970 (ORTIZ), CHAPTER 470, STATUTES OF 2003

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

Subject: Fingerprinting: Criminal Offender Records

Summary: This legislation adds Sections 11077.1 and 11077.2 and amends Section 11077 of the Penal Code relating to criminal offender record information. By July 1, 2004, the Attorney General must establish and implement an electronic communication network that allows the transmission of criminal offender record information requests directly to the Department of Justice (DOJ) from approved private service providers in California for purposes of employment, licensing, certification, custodial child placement or adoption.

In addition, beginning July 1, 2005, DOJ is required to accept fingerprint images and related information to process criminal offender record information requests for the above specified purposes, only if transmitted electronically from a DOJ approved entity. DOJ is also required to accept hard fingerprint cards, to process these requests based on regional unavailability of electronic transmission sites, or when DOJ processing procedures show a need. Nothing in this statute is intended to authorize any entity to access or receive criminal offender record information from DOJ.