

REGULATION INTERPRETATIONS

AND

PROCEDURES

FOR

RESIDENTIAL CARE FACILITIES

FOR THE ELDERLY

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ARTICLE 1. DEFINITIONS AND FORMS**87100 GENERAL****87100****POLICY**

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

87101 DEFINITIONS**87101****(a)(6) Ambulatory Person****PROCEDURE**

Refer to Regulation Interpretations Section 87204.

(b)(1) Basic Rate**POLICY**

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

(b)(2) – Basic Services**POLICY**

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

(e)(6) Exception**POLICY**

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

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

PROCEDURE

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

(g)(1) – Guardian**POLICY**

A guardian is exempt from licensure.

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

Refer to Regulation Section 87162, Provisional License.

87101 DEFINITIONS (Continued)**87101****(l)(1) - License PROCEDURE**

Refer to Health and Safety Code Section 1569.2(g) in the Evaluator Manual Appendix.

(1)(4) - Licensing Agency PROCEDURE

Refer to the Health and Safety Code Section 1569.13 in the Evaluator Manual Appendix.

(n)(2) - Nonambulatory Person POLICY

“Nonambulatory Person” means a person who is unable to leave a building unassisted under emergency conditions. It includes any person who is unable, or is likely to be unable, to physically and mentally respond to a sensory signal approved by the State Fire Marshal--or to an oral instruction relating to fire danger. It includes persons who depend upon mechanical aids such as crutches, walkers and wheelchairs. The determination of the ambulatory or nonambulatory status of persons with developmental disabilities will be made by the Director of the Department of Social Services or his or her designee, in consultation with the Director of Developmental Services or his or her designee. The determination of the ambulatory or nonambulatory status of all other persons with disabilities placed after January 1, 1984 who are not developmentally disabled will be made by the Director of Department of Social Services or his or her designee.

Persons who are deaf or blind are not necessarily considered nonambulatory. Other factors should be evaluated to determine if a deaf or blind person is physically and mentally capable of leaving a building without assistance from another person or a mechanical aid. For example, a deaf person who can respond to a visual signal may be considered ambulatory. However, when coupled with another factor(s) such as dependence upon a mechanical aid, the same deaf person would be considered nonambulatory.

See Regulation Section **87204**, Limitations - Capacity and Ambulatory Status.

(r)(5) - Residential Care Facility for the Elderly**PROCEDURE**

See Health and Safety Code Section 1569.2(l) in the Evaluator Manual Appendix.

(w)(1) - Waiver PROCEDURE

Refer to Regulation Sections 87101(e)(6) and **87209** and Reference Material Section 2-5000 for waiver and exception information.

ARTICLE 2. LICENSE**87106 OPERATION WITHOUT A LICENSE****87106****(b) PROCEDURE**

If information is received regarding the operation of an unlicensed facility, it should be treated as, and given priority as, a complaint. (Refer to Reference Material Section 3-2010.)

If entry cannot be gained into the facility to conduct a site visit, contact the appropriate program investigation section if (1) reasonable attempts have been made to gain access and (2) there is reason to believe that the facility is operating without a license (e.g., interviews with neighbors, etc.). See Reference Material Section 1-0600.

In order to determine if a license is necessary, the review tool may be used during the site visit to assess what the operator has agreed to provide in the living arrangement. There may be instances where sufficient evidence exists to substantiate an unlicensed operation complaint against the operator without the use of this review tool or with partial completion of the review tool. Information used to determine the scores used in the review tool can come from several sources including, but not limited to:

1. Observations and interviews with individuals residing at the location;
2. Interviews with the operator;
3. Information received from other sources such as hospice agency, home health agency, discharge planner, placement agency, social worker or the local ombudsman office.

The Regional Office consulting enforcement attorney should be assisting every step of the way with these fact intensive decisions, and in all situations, the Regional Manager and/or Licensing Program Manager must be consulted before making a decision.

Upon final review of the data collected, if it is determined that care and supervision is provided and meets administrative or evidentiary standard, the issuance of a citation for 'unlicensed operation' followed by issuance of a Notice of Operation in Violation of Law will occur.

If care and supervision are not being provided, and it does not appear that any of the residents need care and supervision, notify the operator via the Complaint Investigation Report (LIC 9099) and notify the complainant(s), if applicable, via the Complainant Response (LIC 856). A copy of these notices should be kept in Community Care Licensing Division files.

87106 OPERATION WITHOUT A LICENSE (Continued)

87106

(c)

POLICY

The In-Home Supportive Services Program provides assistance to eligible aged, blind and disabled Medi-Cal eligible persons to allow them to live independently and avoid institutionalization by providing proper supportive services. Supportive services provided by the In-Home Supportive Services program include domestic and related services such as preparation and cleanup of meals, routine laundry, shopping for food and errands; heavy cleaning; personal care services such as bowel and bladder care, dressing, bathing, oral hygiene, and grooming; accompaniment by a provider during travel to health-related appointments or to alternative resource sites; yard hazard abatement; protective supervision; teaching and demonstration; and paramedical services. In-Home Supportive Services recipients are generally considered to be their provider's employer and are responsible for hiring, supervising, and firing their provider(s).

Due to the similarities between supportive services provided by the In-Home Supportive Services program and the types of care and supervision often provided by facilities, some In-Home Supportive Services living arrangements may appear to fall under the jurisdiction of the Community Care Licensing Division. This is particularly true in congregate living arrangements for the elderly and/or persons with disabilities wherein an In-Home Supportive Services provider lives and/or provides In-Home Supportive Services in the home. Not all congregate living arrangements require licensure, however. Health and Safety Code Section 1569.145(d) provides language exempting certain situations from Community Care Licensing Division licensing requirements.

A license is required in a home or congregate living arrangement wherein the facility operator or his or her employee (in-home supportive services worker) provides care and supervision to one or more elderly, blind or disabled persons under the guise of providing in-home supportive services.

If all residents in a living arrangement exclusively receive supportive services through the In-Home Supportive Services program, either through the same or different providers, licensure is not required. All other living arrangements where care and supervision is provided will need to be assessed on a case-by-case basis. This includes living arrangements where some residents receive supportive services through the In-Home Supportive Services program and some residents receive care and supervision through another provider relationship.

The Department's In-Home Supportive Services Program staff recognize that a home or congregate living situation in which in-home supportive services is being provided may not always be appropriate if all residents are not receiving care and supervision through the In-Home Supportive Services Program. Therefore, they advise the County In-Home Supportive Services Program that this type of living arrangement should be assessed and reported to the Community Care Licensing Division if it is believed that the operation needs to be licensed.

87106 OPERATION WITHOUT A LICENSE (Continued)**87106****PROCEDURE**

When all residents in a congregate living arrangement receive In-Home Supportive Services from the same or different providers, licensure is not required. All other living arrangements need to be assessed on a case-by-case basis.

(f)(2)

POLICY

Health and Safety Code Section 1569.44(c) was amended to incorporate the following language:

- (c) Upon discovery of an unlicensed residential care facility for the elderly, the Department shall refer residents to the appropriate placement or adult protective services agency or the appropriate local or State Long-Term Care Ombudsman if either of the following conditions exist:
 - (1) There is an immediate threat to the clients' health and safety.
 - (2) The facility will not cooperate with the licensing agency to apply for a license, meet licensing standards, and obtain a valid license.

When notifying responsible persons or agencies, mail notices no later than one working day after the site visit has been conducted.

If there are any immediate health and safety risks (e.g., abuse, neglect or exploitation, serious physical plant deficiencies, etc.), telephone the appropriate County Adult Protective Services Agency, local law enforcement or the State Long-Term Care Ombudsman so that immediate action to investigate the situation and to protect residents (such as relocation) can be initiated. Follow up such notifications in writing.

Discuss with the licensing supervisor the need to refer any cases to the appropriate program investigation section.

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87107 EXEMPTION FROM LICENSURE**87107**

(a)(3)

POLICY

Facilities determined by the Community Care Licensing Division to be providing nonmedical care and supervision are not exempt from licensure under Health and Safety Code Section 1569.145(c). These facilities are subject to licensure as a residential care facility for the elderly. The law does exempt church-conducted facilities that depend on prayer or other spiritual means for healing. However, this exemption is limited to facilities that substitute prayer for medical/nursing services that would otherwise be provided for, or required by, residents in a health facility such as a nursing home or hospital as defined in Health and Safety Code Sections 1200 or 1250.

PROCEDURE

When a facility claims to be exempt from licensure, the Community Care Licensing Division will determine if the exemption is valid. To make this determination, licensing staff will:

1. Make an on-site inspection to evaluate the type and extent of **care** and **supervision** being provided to persons residing in the facility.
2. Contact the appropriate California Department of Public Health, Licensing and Certification **staff** when it appears that medical care is required (though not provided) and ask that agency to determine if the facility is exempt from licensure as a health facility as defined by the Health and Safety Code. Community Care Licensing Division staff may arrange joint visits with California Department of **Public** Health licensing staff to evaluate the facility.
3. Advise the facility operator(s)/administrator(s) that they are required to have a license as a Residential Care Facility for the Elderly when it is determined that care and supervision are needed and are being provided and/or medical care is not needed and is not being provided. Give the operator(s) and/or administrator(s) an opportunity to file an application for a license.

87107 EXEMPTION FROM LICENSURE (Continued)

87107

PROCEDURE (Continued)

4. For facilities subject to licensure, the following guidelines will be used in granting waivers/exceptions to **licensing requirements that conflict with the beliefs and practices of the religion**:
 - a. If the facility is conducted **by and for** the adherents of any well-recognized church or religious denomination that relies solely on prayer or other spiritual means for healing, the licensing agency will not require medical assessments, examinations, tests, health histories, or medical supervision and control of any resident or person working in the facility, provided the facility limits employment and admission for care only to adherents of the particular faith of those operating the facility.
 - b. In any **other** residential care facility for the elderly that admits a person adhering to a well-recognized faith that relies on prayer or other spiritual means for healing, medical assessments and examinations, tests and health histories may be excepted **on an individual basis**, except as follows: No exemptions will be granted to the requirement for a tuberculosis test for staff or residents, or to allow a resident with active communicable tuberculosis to reside in a facility. See Regulation Interpretations **and Procedures for Residential Care Facilities for the Elderly** Section 87411(f).
5. If a facility is being operated **by and for** the adherents of a particular faith or religion, such preference may be stated on the license.

(a)(4)

POLICY

Health and Safety Code Section 1569.145(d) was amended as follows to clarify which situations are exempt from licensure:

- (d) Any house, institution, hotel, congregate housing project for the elderly, or other similar place that is limited to providing one or more of the following: housing, meals, transportation, housekeeping, or recreational and social activities; or that have residents independently accessing supportive services; provided, however, that no resident thereof requires any element of care and supervision or protective supervision as determined by the director....

The Residential Care Facilities for the Elderly Act now clarifies what is meant by “room and board” for purposes of determining places that are exempt from licensure as a Residential Care Facility for the Elderly.

Also exempt are facilities where residents independently access their own supportive services. In other words, the facility is not arranging for residents’ medical, dental or other health care services; transportation; recreational or leisure activities; social services or counseling services. The residents themselves are capable of accessing these supportive services. This does not, however, preclude these facilities from providing residents with resource and referral services.

87107 EXEMPTION FROM LICENSURE (Continued)**87107****(a)(4) POLICY (Continued)**

A homeless shelter is exempt from licensure as a Residential Care Facility for the Elderly. To qualify for exemption, the facility is prohibited from providing care and supervision, administering or dispensing prescription medications to homeless persons, or allowing a homeless person to reside permanently in the shelter.

Homeless shelters may provide certain acceptable services. These include temporary shelter, food/meals, clothing, transportation, personal grooming supplies, bathing facilities, laundry facilities, housing search assistance, job search assistance, advocacy, and counseling. These permitted services may appear to cross over with care and supervision requiring licensure; however, a homeless shelter that provides these services shall not be construed as providing elements of care and supervision and is exempt from licensure.

Due to the nature of the program, individuals who come to a homeless shelter may need care and supervision. If an evaluation by shelter staff indicates that a client is in need of care and supervision, the person will be referred for appropriate placement.

PROCEDURE

If a Licensing Program Analyst receives a complaint regarding a homeless shelter operating as an unlicensed facility, the Licensing Program Analyst must immediately discuss the complaint with his/her Licensing Program Manager to assess whether an unlicensed operation of a facility is occurring. In addition, the Licensing Program Analyst and Licensing Program Manager should consult with the enforcement attorney if necessary to obtain assistance interpreting requested documents provided by the operator. This determination will be made on a case-by-case basis. As part of the unlicensed operations complaint investigation, consideration should be made to the documentation provided by the operator demonstrating the status as a homeless shelter. This documentation may include, but not be limited to, a business license or other required permits if required by local ordinances to operate as a homeless shelter, or contracts with local governments to operate a homeless shelter. Local ordinances may have set requirements that must be met in order to operate a homeless shelter (e.g., permits, zoning requirements, maximum number of beds, and business licenses). Senate Bill 2 (Statutes of 2007) required local governments to identify a zone that can accommodate at least one year-round emergency shelter and sets parameters regarding local requirements such as permits and zoning requirements. Emergency shelters would be an example of a homeless shelter that would be exempt from licensure from the Department of Social Services. The Licensing Program Analyst must obtain the Licensing Program Manager's approval prior to issuing findings that a homeless shelter is operating as an unlicensed facility.

87107 EXEMPTION FROM LICENSURE (Continued)**87107**

(a)(9)

POLICY

California Code of Regulations, Title 22, Section 87107(a)(10) specifies that any “similar facility” to those exempted may be allowed to operate without being licensed as a Residential Care Facility for the Elderly as determined by the Director of the California Department of Social Services.

Monasteries and convents have been determined to be “similar” facilities; and, therefore, are exempt from licensure as a residential care facility for the elderly. When someone becomes a monk or nun, he or she takes on a new “family” that can independently access care—and the monastery or convent becomes their home for life. The monastery/convent is exempt from licensure because it is the home for each monk/nun residing there. Like a traditional family, members of the religious order contribute their efforts to the “family” and receive food, clothing and shelter from the “family” as needed. Members of the religious order do not go to their biological family for support, but rather depend on other members of the religious order.

If caregivers in a monastery/convent provide care for financial gain, or bring any outside person into the religious order and the facility to provide care and supervision, the monastery/convent will no longer be exempt.

PROCEDURE

Make an on-site inspection if there are complaints that (1) the caregivers in a monastery/convent are providing care for financial gain (i.e., compensation paid by the recipient exceeds the value of the services rendered), and/or (2) an individual from outside the religious order and the facility has been brought in and is providing care and supervision.

87108 INTEGRAL FACILITIES**87108**

(a)(3)

POLICY

Single site means at one location, or on the same premises. In other words, a facility may be comprised of three separate, self-contained buildings and be under one license as long as the buildings are physically located on the same premises, are managed by the same licensee, are components of a single program, and have a common mailing address.

87109 TRANSFERABILITY OF LICENSE**87109**

(b)

PROCEDURE

See Health and Safety Code Section 1569.87 in the Evaluator Manual Appendix.

87111 CONTINUATION OF LICENSE UNDER EMERGENCY CONDITIONS/SALE OF PROPERTY 87111**(a) POLICY**

If an urgent need for licensure exists and the facility is in substantial compliance with applicable laws and regulations, a provisional license may be issued.

PROCEDURE

See Regulation section **87162**, Provisional License.

(b) POLICY

Community Care Licensing Division permission may be granted to the adult relative, or other nonrelated adult, subsequent to the receipt of all documentation required by Health and safety Code Section 1569.193 [“Handbook” to Regulation Section **87111(b)**], which requires the submission of an application within 20 working days of the licensee’s death. For purposes of clarifying Regulation Section **87111** and the included handbook information, the application must include the following:

1. Proof of control of property;
2. Proof of licensee’s death;
3. Evidence of ability to operate a facility (e.g., having operated a previously licensed facility);
4. Criminal record clearance or exemption;
5. Application for Facility License (LIC 200);
6. Applicant Information – Facility License (LIC 215).

87112**CONDITIONS FOR FORFEITURE OF A LICENSE****87112****POLICY**

Health and Safety Code Section 1569.185 states in part that failure to pay the required license fee – including a finding of insufficient funds to cover a bona fide business check submitted for this purpose – constitutes grounds for the denial or forfeiture of a license.

Until regulations are developed regarding forfeiture of a license due to nonpayment of licensing fees, use Health and Safety Code section 1569.185 as the citing authority and follow the procedures described below.

When the licensing agency learns from a licensee who has forfeited his/her license that he/she is continuing to operate, the licensing agency may issue a citation for unlicensed operation.

Refer to Reference Material Section 3-1600, Review of the Annual License Fee Notice or Billing Notice.

PROCEDURE

The **PROCEDURE** stated below applies to Health and Safety Code Section 1569.185.

When there is no proof of payment or information stating that the licensee has ceased operation and surrendered his/her license in the facility file, attempt to contact the licensee to find out if the licensee plans to continue operating.

If the licensee is believed to be operating, contact the licensee by phone and advise him/her that the fee must be paid immediately. Licensees are to be advised that failure to pay their annual fee will result in the forfeiture of their license and may make them subject to civil penalties.

If the licensee claims to have previously paid the fee or claims to have ceased operation, send a Final Notice Non-Payment of Fees letter (sample below) to both the facility address and the licensee address (if they are different) by regular mail service as a follow-up to the phone conversation.

If the licensee refuses to pay the annual licensing fee, send the Final Notice Non-Payment of Fees letter to the licensee by regular mail service. Licensing staff may wish to explain to the licensee that the Final Notice letter will be mailed to him/her.

If proof of a previous payment or full payment of the annual fee is received in the licensing office prior to the licensee's anniversary date, no further action is needed.

If there is no response to the Final Notice Non-Payment of Fees letter within the required time, then within one week send the Notice of Forfeiture (sample below) to both the facility address and the licensee address (if they are different) by regular mail service.

87112 CONDITIONS FOR FORFEITURE OF A LICENSE (Continued)**87112****PROCEDURE** (Continued)

If the licensee has requested a meeting in response to the Final Notice letter, the analyst who issued the Final Notice and a higher-level staff person will arrange to meet with the licensee or his/her representative. If it is determined that the licensing fee is not due or has been paid (for example, a credit is due because of a previous overpayment), no further action is needed.

If it is determined that the licensing fee is due and the licensee refuses to pay it, the Notice of Forfeiture, as shown below, will be given to the licensee or his/her representative at the time of the meeting provided it is after the licensee's anniversary date.

If the annual licensing fee remains unpaid on the 16th calendar day from the effective date shown on the Notice of Forfeiture, the licensee is to be assessed civil penalties. Licensing staff are to refer to Regulation Section 87106, Operation Without a License, a Regulation Section **87768**, Unlicensed Facility Penalties, for further instructions. A facility site visit is not necessary to assess civil penalties. The Notice of Forfeiture will be used in lieu of the Notice of Operation in Violation of Law until regulations are in place.

Following is a sample Final Notice Non-Payment of Fees letter:

You were previously notified that your annual license fee is due. Our records indicate that your fee of \$_____ has not been received in this office. If you believe that you have paid this fee and that our records are in error, please provide us with a copy of your cancelled check or other evidence of payment within two weeks of the date of this letter.

If you feel that this fee is not due, or if there is any other reason for your failure to pay the fee, you should contact your local licensing office and schedule a meeting to discuss these issues. A date and time will be arranged for you to present your

information. You have two weeks from the date of this letter to contact your local licensing office and request a meeting.

Please be advised that payment of an annual licensing fee is required under Health and Safety Code Section 1569.185. Failure to pay the annual fee is grounds for forfeiture of your license. If you have not paid this fee, either the full payment or your request for a meeting must be received in our licensing office within two weeks from the date of this letter.

87112 CONDITIONS FOR FORFEITURE OF A LICENSE (Continued)**87112****PROCEDURE** (Continued)

If you do not wish to continue operating a licensed facility, please check the box below and return this notice along with your license to us within the above two-week period.

I do not wish to continue operation of my community care facility. I am surrendering my license and am not providing any care and supervision as authorized by this license. I am also aware that to provide care and supervision without a license makes me subject to civil penalties and/or criminal prosecution.

If you choose to surrender your license or your license is forfeited, we will notify the appropriate referral agencies and remove the name of your community care facility from our list of licensed facilities.

Following is a sample Notice of Forfeiture letter:

Because you have failed to pay your annual licensing fee, your license to operate a residential facility for the elderly is forfeited by operation of law pursuant to Health and Safety Code Section 1569.185, effective * _____. As of this date your license is no longer valid.

You have 15 calendar days from the date of this notice to make full payment of your annual licensing fee or to submit a new application for licensure, including the required application fee, to your local licensing office.

If you continue to operate, you are in violation of Health and Safety Code Section 1569.10 or 1569.44, and you are subject to a civil penalty assessment of \$100.00 per day per resident effective on the 16th calendar day from the date of this notice, unless full payment of your annual licensing fee reaches us within the required time.

- * The effective date should be the date of notification, unless a later closure date has been agreed upon.

87118 NONDISCRIMINATION**87118**

(a)

POLICY

The Americans with Disabilities Act, which was signed into law on July 26, 1990, gives civil rights protections to individuals with disabilities that are like those provided to individuals on the basis of race, sex, national origin and religion. It guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services, and telecommunications.

Under the Americans with Disabilities Act, an individual is considered “disabled” if he/she has a physical or mental impairment that substantially limits one or more major

life activities, has a record of such an impairment, or is regarded as having such an impairment (meaning other people treat the individual as if he/she is disabled whether or not that is actually the case). The Americans with Disabilities Act also prohibits discrimination against an individual who is “associated” with an individual with a disability.

The term “public accommodations” includes adult day care facilities and other facilities that provide nonresidential care; it may also include facilities that provide care continuously for only a few days, which would be analogous to hotels that provide short-

term lodging and are subject to the Americans with Disabilities Act. With respect to a residential care facility that provides social services (e.g., a residential care facility for the elderly), there is an apparent overlap between the Federal Fair Housing Amendments Act of 1988 and the Americans with Disabilities Act: the residential aspect appears to be covered by the Fair Housing Act, while the social services aspect appears to be covered by the Americans with Disabilities Act.

Community Care Licensing Division is not responsible for enforcing the provisions of the Americans with Disabilities Act.

PROCEDURE

Because the Community Care Licensing Division is not responsible for enforcing the Americans with Disabilities Act, do not give advice to licensees about their responsibilities under the Americans with Disabilities Act. However, encourage licensees to contact Community Care Licensing Division under the following circumstances:

- If licensees believe that our regulations are an impediment to fulfilling their obligations under the Americans with Disabilities Act.
- If licensees are asked to make a “reasonable accommodation” under the Americans with Disabilities Act or the Fair Housing Act. (This will give the Community Care Licensing Division the opportunity to provide input before the parties negotiate a settlement that might not be considered appropriate by the Community Care Licensing Division or the State Fire Marshal. Involving the Community Care Licensing Division early in the process will enable licensing staff to effectively raise such issues as the intent of the regulations.)

87118 NONDISCRIMINATION (Continued)**87118****(a) PROCEDURE (Continued)**

In addition, a designated Associate Governmental Program Analyst in each Region will serve as the clearinghouse for residential care issues related to the Americans with Disabilities Act. The Regional Offices can still raise questions with the Advocacy and Policy Branch, but the Regional Offices should in all cases make the designated Associate Governmental Program Analyst in their Region aware of Americans with Disabilities Act issues. The expectation is that the designated Associate Governmental Program Analysts will identify regional and/or statewide issues that may be presented to the Advocacy and Policy Branch in issue-memo format. The Advocacy and Policy Branch will assume responsibility for requesting legal opinions as necessary.

Individuals who wish to file a complaint under the Americans with Disabilities Act, or who wish to obtain further information, should be advised to contact the following agencies:

- The local office of the State Department of Fair Employment and Housing. The State Department of Fair Employment and Housing has a wealth of information and will coordinate with federal agencies as appropriate.
- For additional information, individuals should contact:

U.S. Department of Justice
Civil Rights Division
Office on the Americans
with Disabilities Act
P.O. Box 66118
Washington, D.C. 20035-6118
(202) 514-0301 or 1-800-514-0301
(202) 514-0383 TT/TDD or 1-800-514-0383
Internet: <http://www.usdoj.gov/crt/ada/adahom1.htm>

- Because the Fair Housing Act and the Americans with Disabilities Act have apparent overlap, individuals may also wish to contact:

U.S. Department of
Housing and Urban Development (HUD)
Region IX--San Francisco
Phillip Burton Federal Bldg.
and U.S. Courthouse
450 Golden Gate Ave.
P.O. Box 36003
San Francisco, CA 94102-3448
(415) 489-6400

87118 NONDISCRIMINATION (Continued)**87118****PROCEDURE (Continued)**

Or individuals may wish to call HUD's toll-free complaint hotline: 1-800-347-3739; TDD 1-415-436-6594.

87120 APPLICATION FOR RENEWAL OF LICENSE (Repealed 8/00)**87120****ARTICLE 3. APPLICATION PROCEDURES****87155 APPLICATION FOR LICENSE****87155****(a) POLICY**

This is to clarify the issue of whether management companies utilized by applicants/licensees to operate and manage facilities should be added to the license as co-licensees. If an applicant/licensee agrees to allow a management company to assume responsibility and control over any aspect of care and supervision in the operation or management of the facility, the management company must appear on the license as a co-licensee.

PROCEDURE

When it has been determined that such a co-licensee situation exists, each of the entities must meet all applicable requirements that an individual/licensee must meet to obtain a license.

The relationship between an applicant/licensee and management company is not to be considered a partnership, and are not to be required to demonstrate that legal relationship. The management company is normally an independent contractor. A copy of the contract between the licensee/applicant and the management company must be submitted with the application for licensure.

(a)(1) POLICY

Orientations are required before the submission of the application pursuant to Health and Safety Code Section 1569.235 which reads as follows:

As a requirement for licensure, the applicant shall attend an orientation given by the department which outlines the applicable rules and regulations, and the scope and responsibility for operation of a residential care facility for the elderly.

Persons inquiring about licensure **shall be advised** that they must attend an orientation. (See Reference Material Section 3-0100). **Only those that have never attended an orientation for the specific facility category are required to attend. Current licensees that are relocating to a new site, changing the type of ownership (i.e. individual to Limited Liability Partnership), or expanding by opening another facility, do NOT need to attend a new orientation. The intent of the orientation is to provide information about**

87155 APPLICATION FOR LICENSE (Continued)**87155****(a)(1) POLICY (Continued)**

licensing, specific regulations for the applicable facility type, and the application process. Only one person needs to attend for any entity applying for a license.

The Application Booklet for Facility License (LIC 281) is distributed during orientations. (See Evaluator Manual Section 3-0025, Guidelines for Processing Applications.)

PROCEDURE

When all required documents in Section A are received, review to ensure that they are properly completed. If additional information or clarification is needed, contact the applicant by telephone or via the Notification of Incomplete Application form (LIC 184). Record all telephone calls on the Contact Sheet (LIC 185), which is kept in the facility file. If all material is complete, return the facility file to the clerk pending receipt of supportive documents in Section B.

(a)(2)(B) POLICY

Only the person designated by a firm, partnership, association or corporation as the facility administrator is required to be certified. As long as there is a designated administrator who is certified, the chief executive officer and the other officers are not required to take the 40 hours of training or to be certified. However, in many cases, officers voluntarily become certified and keep their certification current so that they can serve as a backup administrator. There is no rule prohibiting officers from obtaining and maintaining certification on a voluntary basis.

If an applicant or a chief executive officer who is not the designated administrator takes the 40 hours of training, it is not necessary for him/her to take continuing education courses or to keep his/her certification current unless he/she voluntarily chooses to do so.

(a)(4) POLICY

The applicant must disclose on the Applicant Information—Facility License form (LIC 215) any of the following:

1. Past or present beneficial ownership of 10 percent or more in any community care facility, residential care facility for the elderly or health facility; or any past or present service as an administrator, director, general partner or corporate officer of any such facility.
 - a. “Beneficial ownership” is any type or form of ownership. This includes, but is not limited to, persons who are members of nonprofit corporations, stockholders, trustees, trustors, partners, etc.

87155 APPLICATION FOR LICENSE (Continued)**87155****(a)(4) POLICY (Continued)**

2. Revocation or other disciplinary action taken or being taken against a license held or previously held by the entities described in Health and Safety Code Section 1569.15(d).
 - a. “Other Disciplinary Action” includes pending or sustained denial actions, temporary suspension orders, pending revocations, injunctions and misdemeanor actions (Health and Safety Code Section 1569.40). This information is gathered for character reference purposes only and should not be considered a reason to cease review of the application (Health and Safety Code Section 1569.16). However, if an accusation has been served, that is grounds for denial of the application.
3. If an applicant indicates, or the licensing agency determines, that the applicant previously was issued a license for a community care facility, a residential care facility for the elderly, or a health facility which was revoked within the preceding two years, the licensing agency will cease any further review of the application until two years have elapsed from the date of the revocation. Such cessation does not constitute a denial of the application for the purposes of Health and Safety Code Section 1569.22 or any other provisions of law (Health and Safety Code Section 1569.16). In addition, an applicant or other person who meets this description cannot serve as a board member, executive director, or an officer of a licensee of any licensed residential care facility for the elderly [Health and Safety Code Section 1596.59(a)(1)].

PROCEDURE

Review the Administrative Organization form (LIC 309). If the form lists persons who own 10 percent or more of stock (for corporations), verify that the information required by Health and Safety Code 1569.16 has been obtained. Ensure that criminal record clearances or exemptions for chief executives are obtained in accordance with Health and Safety Code Section 1569.17(b) and Regulation Section 87355.

Upon disclosure of such involvement or of any revocation or disciplinary action, refer to the list of administrative actions to determine or verify that an administrative action was or is being taken.

The list of administrative actions is provided as a monitoring tool and consists of all completed administrative actions that resulted in a finding of revocation. The report also provides a master list of sustained denial actions and completed temporary suspension orders. Licensing agencies are advised that there may be revocation actions adopted by the Department after the date of a quarterly report. For further clarification on the disposition of a particular case, contact the Office of the Chief Counsel.

For applicants who disclose administrative actions or involvement in a health facility, contact the California Department of Health Services, Licensing and Certification Program Standards Unit, (916) 445-2070. This unit will be able to provide information regarding administrative actions against health facilities.

87155 APPLICATION FOR LICENSE (Continued)**87155****(a)(4) PROCEDURE (Continued)**

If it is verified that a license has been revoked within the past two years, return the application to the applicant with the standard form letter.

(a)(6) POLICY

If the property is not owned by the applicant/licensee, evidence of control of the property (e.g., a copy of the lease or rental agreement) must be submitted to the licensing agency. This policy does not preclude a licensing agency from also requiring copies of deeds when necessary to verify who has control of the property. Such circumstances would include instances where there are multiple license applications for a single location, or where information is obtained by the licensing agency that would cause them to suspect that the applicant does not have control over the property. Such information will only be secured at the time of application, or when subsequent circumstances dictate that such proof of control is needed.

Inform applicants at orientations, interviews, field visits, etc., of their responsibility to adhere to terms placed on deeds, rental agreements and lease agreements. However, the licensing agency is not responsible for determining what the terms of such agreements are and for ensuring that they are met.

(a)(13)(B) POLICY

There must be enough liquid assets in reserve to ensure facility operation for the first three months without relying on prospective resident fees. Start-up funds cannot include funds for construction costs.

However, when there is a change of ownership and residents are currently residing in the facility, expected income from existing clients is considered.

PROCEDURE

Review the Monthly Operating Statement (LIC 401), the Balance Sheet--Financial Statement (LIC 403), the Financial Information Release and Verification form (LIC 404), or other approved forms in conjunction with any other optional financial statements from a bank or lending institution, and verify the availability of the three months of start-up funds.

(b) POLICY

A husband and wife, an unmarried couple or other adults living at the proposed facility may elect to sign a joint application for a family type of license. However, if only one of the foregoing persons wishes to sign an application, the other party in the home is not also compelled to sign the application. Liability for accidents and injuries sustained by clients, employees or others in the course of the operation of the licensed facility exists for both spouses of a married couple, although only one name may be shown on the license.

87156 LICENSING FEES**87156**

The following are procedures pursuant to Health and Safety Code Section 1569.185.

This process is intended to give an overview of the entire fee collection process. The Regional Office is responsible for Regional Office procedures only.

MAILING OF LICENSING INFORMATION SYSTEM GENERATED ANNUAL LICENSE FEE NOTICE

The *Annual License Fee Notice* is automatically generated by the Licensing Information System the first Wednesday of every month and centrally mailed out from the California Department of Social Services mailroom to the licensee's address four months prior to the facility's license anniversary date.

If a licensee pays the annual fee after the facility's anniversary date, Regional Office staff must inform the licensee to submit a new license application and new application fee to become re-licensed. Any exceptions to this must be approved by the Regional Manager.

A licensee who fails to pay the full annual fee by the facility's anniversary date subjects the license to forfeiture. In the event the licensee continues to operate after their license is forfeited, they are operating an unlicensed facility and are subject to unlicensed facility penalties pursuant to Health and Safety Code Section 1569.485. The Regional Office staff are to follow the Regulation Section for Unlicensed Facility Penalties and Evaluator Manual Section 1-0640.

If a licensee is involved in the sale and transfer of the property and business, the annual fee does not have to be paid provided the parties involved in the transfer fully comply with the requirements of Health and Safety Code Section 1569.191(e), and the new application fee has been paid. This is the only circumstance that precludes the licensee from paying the annual fee.

Notice instructs the licensee to:

- Send the annual payment to the Central Office Cashiering, MS 14-67, P.O. Box 944243, Sacramento, CA 94244-2430, due 30 days prior to the facility's anniversary date; or
- Indicate on the *No Longer in Business Notification* located on the reverse side of the fee notice if the facility is no longer in operation as a residential care facility for the elderly and return it to the Regional Office.

Regional Office Information:

- If the Regional Office receives an annual payment, the check must be endorsed and transferred with supporting documentation to the Central Office Cashiering on a daily basis;
- No action is necessary if at any time prior to the facility's anniversary date full

87156 LICENSING FEES (Continued)

87156

payment of the annual license fee is received and entered by the Central Office Cashiering into the Licensing Information System.

Central Office Cashiering Information:

- Central Office Cashiering will input fee payment into the Licensing Information System Cashiering screens within 48 hours of receipt;
- Central Office Cashiering will verify that the transmittal document concurs with enclosed checks;
- Facility information changes made on the *Annual License Fee Notice* are forwarded to Central Operations Branch by the Central Office Cashiering. The Central Operations Branch sends the copies on to the Regional Office for the Licensing Information System to be updated.

PROCEDURE**For Regional Office**

NOTE: The LIC 201F will no longer be used. The Annual License Fee Notice or Annual Aggregate License Fee Notice is now a back-to-back one-page letter generated by the Licensing Information System.

Should a licensee return the *Annual License Fee Notice* to the Regional Office with the signed *No Longer in Business Notification* indicating the facility is no longer in operation, Regional Office staff will enter this information into the Licensing Information System *Facility Closure* screen using Closure Code 3, "Closed-Licensee-Initiated" and file the notice in the facility file. (Refer to Section 3-1600 for surrender acknowledgement instructions.)

NOTE: Staff who perform the above function will inform the analyst of the closed status of the facility. No additional automated notices will be produced.

Any Annual License Fee Notices, or Final Notices or Forfeiture Notices that are returned to the Regional Office that are signed and indicate a Reason for Closure on the No Longer in Business Notification, Regional Office staff must forward a copy of the Reason for Closure to the Technical Assistance Bureau at MS 19-56.

PROCEDURE**For California Department of Social Services Mailroom**

- On the first Thursday of every month, the California Department of Social Services mailroom personnel pick up the *Annual License Fee Notice* from the Health and Welfare Data Center for mailing to the licensee's address the following day.

87156 LICENSING FEES (Continued)**87156****PROCEDURE (Continued)****MAILING OF LICENSING INFORMATION SYSTEM GENERATED FINAL NOTICE OF ANNUAL LICENSE FEE-UNDERPAYMENT NOTICE**

If the annual fee payment has *not* been entered into the Licensing Information System by the Central Office Cashiering by approximately the 22nd day preceding the facility's anniversary date (this can be viewed on *the Payment History Report/Aggregate Menu* screen by Regional Office staff), or the licensee-initiated closure code has not been entered, the Licensing Information System will generate a *Final Notice of Annual License Fee-Underpayment* and a *No Longer in Business Notification*. The Regional Office will receive copies of the notices every Friday for filing in the facility file, as well as a *List of Facilities Issued a Final Notice for Annual Fee*. This listing identifies facilities requiring a follow-up courtesy call by the Regional Office.

Notice advises licensee that:

- *Full* payment of the annual fee has not been received and the fee is required to remain licensed pursuant to Health and Safety Code Section 1569.185;
- If payment has already been made the licensee must provide evidence to the local Regional Office listed on the reverse side of the notice;
- If the facility is no longer in operation, the licensee is to sign in the area indicated on the *No Longer in Business Notification* located on the reverse side of the letter stating they are no longer providing care and supervision to clients and return it with their original license to the listed Regional Office;
- If full payment is not received by the facility's anniversary date, their license will be forfeited, pursuant to Health and Safety Code Section 1596.185(d) for failure to pay.

Licensee is instructed to:

- Mail the payment prior to the facility's anniversary date in the form of a money order or cashier's check only; or
- Submit proof of payment to their local Regional Office if the licensee has already paid the current annual fee; or
- If the facility is no longer in operation, to sign and return the *No Longer in Business Notification* found on the reverse side with the original license to the listed Regional Office by the facility's anniversary date. (This procedure is to inform Regional Office staff of the operational status of a facility only. This notice is not used for a facility relocation or change in ownership.)

87156 LICENSING FEES (Continued)**87156****PROCEDURE****For Regional Office**

- *A List of Facilities Issued a Final Notice For Annual Fee* is printed every Friday at the Regional Office;
- The Regional Manager or his/her delegate calls the licensees on the *List of Facilities Issued a Final Notice for Annual Fee*. The phone calls shall be made within seven calendar days following the date the report prints to find out the status of the fee payment and facility operation;
- If the licensee states the facility is still in operation, the licensee must be informed that in order to retain their license, they must pay the full annual fee by close of business of their anniversary date or their license will be forfeited by operation of law;
- If the licensee states that the facility is no longer in operation, Regional Office staff must ask the licensee if they wish to surrender their license. If the licensee chooses to surrender their license, direct them to sign and return the *No Longer in Business Notification* acknowledging the surrender with their original license to the listed Regional Office. Upon receipt of the signed *No Longer in Business Notification* or other written notification, the license will be forfeited pursuant to Health and Safety Code Section 1569.19(b). Regional Office staff are to input Closure Code 3 “Closed-Licensee-Initiated” into the Licensing Information System. (Refer to Section 3-1600 for surrender acknowledgement instructions).

NOTE: Staff who perform the above function will inform the analyst of the closure. No additional automated notices will be produced. If a written statement or the signed *No Longer in Business Notification* is not received by the facility anniversary date, the license is forfeited pursuant to Health and Safety Code Section 1569.185(d). The facility must be closed on the Licensing Information System under Closure Code 7, “Closed Non-Payment.” (Please refer to *Closing A Facility Due To Nonpayment* procedures.)

- The Regional Office must document all related telephone conversations on a Contact Sheet (LIC 185) to be placed in the facility file;
- If the Regional Office receives proof of payment from the licensee, the Regional Office must place a copy into the facility file and forward the original documentation to the Accounting Unit, MS 13-72, for entering into the Licensing Information System. The Accounting Unit will reconcile the proof of payment with the Licensing Information System by posting payment information into the *Payment History/Aggregate Menu* screen. No additional automated notices will be produced.

87156 LICENSING FEES (Continued)**87156****PROCEDURE (Continued)****For California Department of Social Services Mailroom**

- The California Department of Social Services mailroom sends these notices to the licensee's address and, if different, to the facility address.

MAILING OF LICENSING INFORMATION SYSTEM GENERATED NOTICE OF FORFEITURE**This list is information only**

If the full annual fee payment has *not* been entered into the Licensing Information System by the Central Office Cashiering by approximately the 8th day preceding the facility's anniversary date, (this also can be viewed on the *Payment History Aggregate Menu* screen by the Regional Office staff) or the licensee-initiated closure code has not been entered, Licensing Information System will generate a *Notice of Forfeiture* and a second *No Longer in Business Notification*. The Regional Office will receive copies of the notices for filing into the facility file, as well as, a *List of Open Facilities Issued a Notice of Forfeiture/Revocation Letter for Annual Fee*. This listing is also printed at the Statewide Program Office for information only.

Notice advises licensee that:

- Their license to operate a residential care facility for the elderly will be forfeited pursuant to Health and Safety Code Section 1569.185(d) on the facility anniversary date due to nonpayment of the annual license fee;
- If the license is forfeited, the licensee will be required to resubmit a new licensing application and fee to become re-licensed;
- If the licensee continues to operate with a forfeited license, they will be in violation of Health and Safety Code Sections 1569.10 and 1569.44 and will be subject to penalty assessment for operating without a valid license pursuant to Health and Safety Code Section 1569.485.

Licensee is instructed to:

- Mail the payment prior to the facility's anniversary date in the form of a money order or cashier's check only; or
- Send in the *No Longer in Business Notification* with the original license to the listed Regional Office.

87156 LICENSING FEES (Continued)**87156****PROCEDURE** (Continued)**For Regional Office**

- A *List of Open Facilities Issued a Notice of Forfeiture/Revocation Letter For Annual Fee* is printed every Friday at both Statewide Program Offices and Regional Offices;
- If the Regional Office receives the *No Longer in Business Notification* by the facility's anniversary date, the Regional Office shall input Closure Code 3, into the *Facility Menu* of Licensing Information System, "Closed-Licensee-Initiated." (Refer to Section 3-1600 for surrender acknowledgement instructions and follow office procedure for closing file.)

NOTE: Analyst must be informed of the closure.

PROCEDURE**For California Department of Social Services Mailroom**

- The California Department of Social Services mailroom sends these notices to the licensee's address and, if different, to the facility address.

CLOSING A FACILITY DUE TO NONPAYMENT-FOR REGIONAL OFFICES

If the full annual fee has *not* been entered into the *Payment History Report* screen of the Licensing Information System, or the licensee-initiated closure code into the *Facility Closure* screen by approximately the 11th day following a facility anniversary date, the facility will appear on the Licensing Information System generated *Listing of Facilities to be Closed Due to Nonpayment of Annual Fee*.

This listing informs the Regional Office of the facilities that are currently open on the Licensing Information System that need to be closed due to forfeiture of their license from nonpayment of their annual license fee. This listing prints each Monday evening at the Regional Office and every month on the second Monday at the Statewide Program Offices.

87156 LICENSING FEES (Continued)**87156****PROCEDURE (Continued)****For Regional Office**

REGIONAL OFFICE STAFF MUST RESEARCH EACH FACILITY TO VERIFY THE ACCURACY OF THE FACILITY'S NON-PAYMENT STATUS, PRIOR TO CLOSING THEM IN THE LICENSING INFORMATION SYSTEM DATABASE.

If a licensee pays the annual fee after the facility's anniversary date, Regional Office staff must inform the licensee to submit a new license application and new application fee to become re-licensed. Any exceptions to this must be approved by the Regional Manager.

- Regional Office staff must close the facilities in the Licensing Information System, under closure Code 7, under "Closed-Non-Payment of Fees." This closure option is under Option #9, Application/Facility Closure which is under Option #5, Facility Menu;
- Follow through with Regional Office policy for closing facilities;
- These facilities must be closed within ten calendar days from the date the report prints.

Visits are discretionary for verifying if facility operation has ceased.

CLOSING A FACILITY DUE TO NONPAYMENT-FOR STATEWIDE PROGRAM OFFICES**This list is informational only**

The *Listing of Facilities to be Closed Due to Nonpayment of Annual Fee* prints every month on the second Monday at the Statewide Program Offices. This list captures facilities remaining open on the Licensing Information System from 11 to 30 days past their facility's anniversary date and in increments of 30 days thereafter. *The Statewide Program Office report and the Regional Office report are the same report and can be referenced by the report run date.* Due to the report only reflecting facilities from the current billing cycle, facilities that remain open on the Licensing Information System without a fee payment can remain on the report for up to eight months past their facility's anniversary date before dropping off.

87156 LICENSING FEES (Continued)**87156****PROCEDURE (Continued)****MAILING OF LICENSING INFORMATION SYSTEM PRODUCED DISHONORED CHECK NOTICE**

If the check processed for the annual fee is dishonored due to insufficient funds, stale date, or closed account the Accounting Unit will enter returned check information into the *Payment History Aggregate Menu* screen of the Licensing Information System. This will immediately generate a *Dishonored Check Notice* to the licensee. The Accounting Unit is responsible for mailing the notice certified mail to the licensee. A facility file copy is printed at the Regional Office.

If the check is returned by the bank due to insufficient funds, stale date or closed account, the Regional Office will receive a copy of the *Dishonored Check Notice*.

If the check is returned due to stop payment, the Regional Office will receive a copy of the *Dishonored Check Notice* and a faxed copy of the stop payment check from the Accounting Unit. See Regional Office procedures for further instructions.

The Dishonored Check Notice advises the licensee that:

- The check for payment of the annual license fee was returned by the bank because of insufficient funds;
- The licensee has 30 days to submit payment in the Total Due amount listed on the letter unless evidence is provided an error was made by their financial institution;
- The license will be subject to forfeiture if payment has not been submitted to the Accounting Unit or appropriate documentation by the facility's anniversary date;
- If the check was dishonored due to a stop payment, the licensee must provide the Department with a Good Faith Dispute in the manner provided in Civil Code 1719 within 30 days from the date of the letter;
- Continued operation after the facility's anniversary date without a valid license will result in the assessment of unlicensed penalties pursuant to Health and Safety Code Section 1569.485;

The licensee is instructed to:

- Mail payment in the form of a cashier's check or money order only. A bona fide business check will be accepted per Health and Safety Code Section 1569.185(c);
or

87156 LICENSING FEES (Continued)**87156****PROCEDURE (Continued)**

- If the licensee wants to dispute this claim, they must submit documentation to the Accounting Unit from their financial institution to support their claim otherwise payment for the Total Due amount is necessary; or
- If the check was dishonored due to a stop payment, and if the licensee is asserting a Good Faith Dispute claim pursuant to Civil Code Section 1719, they must provide the Accounting Unit with a written statement of reasons for the stop payment; or
- If payment has already been resubmitted, return the *Dishonored Check Notice* with the check number and date of remittance to the Accounting Unit.

Regional Office Procedures:

- If the Regional Office receives a copy of the *Dishonored Check Notice* only, Regional Office staff are to file the notice in the facility file. No additional action will be necessary provided the annual fee payment is paid prior to the due date.
- If the Regional Office receives a copy of the *Dishonored Check Notice* along with a copy of the check indicating a stop payment:
 - Regional Office staff must investigate the reason for the stop payment by contacting the licensee within 30 days from the date of the notice.
- If the Regional Office is notified verbally or in writing by the licensee that they are asserting a Good Faith Dispute, and as a result a stop payment has been placed on the annual fee check, they must adhere to the following procedures to preserve the Department's rights under Civil Code 1719 to collect the annual fee:
 - Regional Office staff must ask the licensee what the Good Faith Dispute is about i.e. a statement of reasons for the stop payment;
 - Regional Office staff must consult with the appropriate program consultation attorney regarding the Good Faith Dispute claim. The consultation attorney will recommend the appropriate course of action, e.g., to go forward with forfeiture/revocation or to keep the case on hold to try to work out the dispute, etc.;
 - Regional Office staff must document all communication on a Contact Sheet (LIC 185) and keep it in the public section of the facility file;

87156 LICENSING FEES (Continued)**87156****PROCEDURE (Continued)**

- If the Regional Office receives the *List of Facilities Issued a Final Notice for Annual Fee* and it includes the facility issued a *Dishonored Check Notice*:
 - Regional Office staff must check the list or the Licensing Information System for facility billing status and follow the procedures listed under *Mailing of Licensing Information System Generated Final Notice of Annual License Fee-Underpayment*;
- If the Regional Office receives the *List of Facilities Issued A Forfeiture/Revocation Notice for Annual Fee* and it includes the facility issued the *Dishonored Check Notice*:
 - Regional Office staff must check the list or the Licensing Information System for facility billing status and follow the procedures listed under *Mailing of Licensing Information System Generated Notice of Forfeiture*;
- If the Regional Office receives the *Listing of Facilities to be Closed for Nonpayment of Annual Fee* and it includes the facility issued a *Dishonored Check Notice*:
 - Regional Office staff must check the list or the Licensing Information System for facility billing status and follow the procedures listed under *Closing a Facility Due to Nonpayment-for Regional Offices*.

87157 APPLICATION REVIEW**87157**

(a)(3)

PROCEDURE

Refer to Regulation Sections **87155**, **87159** and **87161**; and to Health and Safety Code Sections 1569.82 through 1569.87.

87159 WITHDRAWAL OF APPLICATION**87159**

(a)

POLICY

The applicant has the right to withdraw an application any time prior to the issuance of a license. The withdrawal will not be considered a denial. However, the withdrawal of an application does not deprive the Department of its authority to institute or continue a proceeding to deny an application, unless the Department has consented to the withdrawal in writing. If the licensing agency gives consent to a withdrawal, administrative action cannot be taken. Thus, written consent to a withdrawal should not be given in situations where application denial is intended or pending. Moreover, the withdrawal of an application is not appropriate in situations where the application has already been acted upon (denied or approved).

87159 WITHDRAWAL OF APPLICATION (Continued)**87159****(a) PROCEDURE**

If the licensing agency is notified that an applicant is no longer interested in obtaining a license and wishes to withdraw his/her application, confirm in writing the applicant's intent to withdraw the application and give consent to the withdrawal unless a denial action is pending. If a denial action is pending, continue the denial procedure and do not consent to the withdrawal of the application.

1. If a denial action is pending, send the following notification:

We acknowledge receipt of your request to withdraw your residential care facility for the elderly license application. This acknowledgment is not a consent to the withdrawal of your license application and does not deprive the Department of its authority to take action to deny your application.

2. If a denial action is not pending, send the following notification:

We have received your request to withdraw your residential care facility for the elderly license application and do hereby consent to the withdrawal. If you wish to obtain a residential care facility for the elderly license in the future, you must reapply for a license.

Document in the facility case file the reason for consenting or not consenting to the withdrawal.

87161 RESUBMISSION OF APPLICATION**87161****(a)(3) POLICY**

When an unlicensed facility is in operation, the facility may file an application. However, continued operation pending licensure is a violation of the law.

PROCEDURE

See Regulation and Regulation Interpretations Section 87106.

(a)(5) POLICY

The Administrative Organization form (LIC 309) is available for this purpose. Licensing agencies will require that criminal record clearances or exemptions be obtained for individuals that meet the criteria specified in Regulation Section **87355**.

Minor increases in capacity not requiring resubmission of an application are those changes that would not require a new fire clearance or that would not affect physical plant accommodations. However, all requests for increases in capacity should be in writing.

87162 PROVISIONAL LICENSE**87162****(a) POLICY**

Provisional licenses are not for the purpose of “expediting” the licensing process and are not to be used as “probationary licenses.” An applicant must comply with the criminal record and fire-clearance requirements in order to meet the substantial compliance criteria. To the extent that waiting for these clearances “hold ups” the licensing approval process, a provisional license cannot be used to remedy the situation.

PROCEDURE

When an application for a provisional license is approved, route it to the clerk for typing and logging. Prepare a cover letter that describes the conditions of the provisional license and states the deficiencies to be corrected before a regular license can be granted. The cover letter should conclude with the statement that unless all conditions are fulfilled, a regular license will not be granted. Supervisory review of the provisional license and the cover letter signed by the Regional Manager is required before mailing.

If during the term of a provisional license, health and safety risks arise:

1. Issue a Notification of Initial Application Denial letter (LIC 192) and establish in that letter the date the facility must cease operations, taking into consideration any resident relocations that may be necessary (see Regulation Section 87163).
2. If the facility continues operation after the effective date in the LIC 192, issue a Notice of Operation in Violation of Law (LIC 195) (see Regulation Section 87106). (See Reference Material Section 1-0050 for Civil Penalty Procedures; and Reference Material Section 1-1010 for Administrative Action Options.)

Before terminating a provisional license, the licensing agency will (1) conduct a review to determine whether all licensing requirements have been met and (2) deny or approve the application for a license.

87163 DENIAL OF LICENSE APPLICATION**87163****(a) POLICY**

NOTE: The following is a list of some common conditions that may necessitate the denial of an application:

1. Failure to meet regulations for securing fire, health and sanitation clearances.
2. A history of criminal conviction with insufficient evidence of rehabilitation. (See **California Code of Regulations, Title 22**, Section 87355.)
3. A proposed physical plant that does not meet requirements.
4. Failure to follow through with the application process.

87163 DENIAL OF LICENSE APPLICATION (Continued)**87163****(a) POLICY (Continued)**

When it is determined that an application will be denied, the applicant is not to be given the option to withdraw the application prior to the denial action. In this circumstance, the licensing agency will not consent to a request to withdraw an application. If the licensing agency accepts a withdrawal of the application in writing, the licensing agency cannot proceed with any administrative action on the case. The decision and order resulting from an administrative hearing serve to officially document and record the denial. Health and Safety Code Section 1569.15(e) provides that the applicant must disclose previous disciplinary actions taken against him/her. Health and Safety Code Section 1569.16 provides for certain Community Care Licensing Division actions based on past revocations if the individual applies again for a license. It is important, therefore, to record the denial actions for future reference. This process does not apply when an applicant withdraws his/her application and the licensing agency, at the time of the withdrawal action, has no grounds for a license denial action. (See California Code of Regulations, Title 22, Section 87159 and Regulation Interpretations and Procedures for Residential Care Facilities for the Elderly Section 87159.)

A Residential Care Facility for the Elderly applicant who has previously held a Residential Care Facility for the Elderly license that was revoked as a result of abandoning a Residential Care Facility for the Elderly and residents in care shall be excluded from licensure without the right to petition for reinstatement. All petitions for reinstatement by licensees who abandoned residents shall be denied without review and the denial letter shall refer to Health and Safety Code Section 1569.50(d).

(g) PROCEDURE

Review all applications that appear headed for denial with the licensing supervisor. All denial actions must be fully documented and substantiated. The importance of this cannot be overemphasized. Upon compiling the necessary documentation and consultation, a Notification of Initial Application Denial (LIC 192) over the Regional Manager's signature will advise the applicant in writing that the application is denied and inform him/her of the specific regulations that were not met. The licensing agency will send all denial letters by certified mail. A copy of the denial letter is sent to the Program Administrator. The denial letter further informs the applicant that the denial can be appealed in writing within 15 days.

In the event the applicant appeals the denial, the Program Administrator will acknowledge receipt of the letter and advise the applicant that an administrative hearing will be scheduled. A copy of the acknowledgment letter is then sent to the Regional Office, where a Statement of Facts will be prepared. The Statewide Program Office will initiate the steps necessary for an administrative hearing to review the denial action. The analyst may be required to testify during this hearing. The documentation previously gathered will be used to show why the denial action was justified. If the applicant does not file an appeal, the denial is complete and no further action is needed other than verifying that the facility is not in operation. For more information about the application denial process and the documentation requirements for denials, see the Administrative Actions sections in Reference Material, Enforcement Actions, Sections 1-1000 through 1-1197.

ARTICLE 4. OPERATING REQUIREMENTS**87202****FIRE CLEARANCE****87202**

(a)(2)

POLICY

Residential care facilities for the elderly must be fire-cleared for persons 65 years of age and older. This clearance will also cover persons between 60 and 64 years of age. Therefore, there will be no special fire-clearance limitation printed on the license.

Continue to indicate on fire-clearance requests the capacity of the facility, the ambulatory status of the residents, the age of the residents, and whether any residents require the use of postural supports.

Persons who require the use of postural supports are considered nonambulatory.

If the fire clearance is denied for a deficiency that appears to be correctable, contact the applicant. If the applicant's decision is to correct, record the plan-of-correction date on the Contact Sheet (LIC 185) and return the folder to the file. If the deficiency is not correctable, or if the applicant determines that the correction would be too costly, begin the denial or withdrawal process as appropriate.

Initiate the appropriate administrative action if a fire-clearance denial is received on a licensed facility.

Under no circumstances is a license to be issued without an appropriate fire clearance, and under no circumstances is the requirement for a fire clearance be waived.

PROCEDURE

See Health and Safety Code Sections 1569.85 and 1569.86.

87203**FIRE SAFETY****87203****POLICY**

The State Fire Marshal and the local fire authority require that the request for a fire clearance be made through, and the approval maintained by, the licensing agency.

In order to obtain an appropriate fire clearance, the analyst is responsible for providing sufficient information regarding the age, capacity, ambulatory status and physical/mental condition of residents.

PROCEDURE

If the fire clearance is denied for a deficiency that appears to be correctable, contact the applicant. If the applicant's decision is to correct, record the plan-of-correction data on the Contact Sheet (LIC 185) and return the folder to the file. If the deficiency is not correctable or the applicant determines the correction would be too costly, begin the denial or withdrawal process as appropriate.

87203 FIRE SAFETY (Continued)**87203****PROCEDURE** (Continued)

If a fire clearance denial is received on a licensed facility, the licensing agency will initiate the appropriate administrative action. Under no circumstances will a license be issued without an appropriate fire clearance, and under no circumstances will the requirement for a fire clearance be waived.

87204 LIMITATIONS - CAPACITY AND AMBULATORY STATUS**87204**(b) **POLICY**

Health and Safety Code Section 13131 defines “nonambulatory” and requires the Director of the California Department of Social Services or his or her representatives to determine ambulatory status.

Although Regulation Section **87458** requires medical assessments to include ambulatory status, the licensing agency should not rely solely on the determination in the medical assessment because physicians frequently do not understand the definition of nonambulatory that is used in community care facilities.

To be considered ambulatory, a resident must meet all of the following criteria:

1. The resident is not dependent on a mechanical aid such as a walker, crutches or a wheelchair, and is able to ambulate a reasonable distance in a brief period of time. Dependence on a cane or “quad cane” would not, by itself, classify a resident as nonambulatory if he/she is able to meet the requirements of 2 and 3 below.
2. The resident is able to respond both physically and mentally to an audible or visual signal, or to an oral instruction; and can evacuate the building unassisted in an emergency situation.
3. The resident is able to utilize all escape routes identified in the facility’s fire/safety evacuation plan. This includes doors, stairs and fire escapes.

If a resident fails to meet any of the above criteria, he/she should be considered nonambulatory.

PROCEDURE

To determine the ambulatory status of residents, take as many of the following actions as necessary:

1. Ask the administrator or facility representative for the names of all nonambulatory clients.

87205 ACCOUNTABILITY OF LICENSEE/GOVERNING BODY**87205****(b) POLICY**

The Administrative Organization form (LIC 309) can be used to notify the licensing agency of any changes in a corporation, organization, partnership or association.

87208 PLAN OF OPERATION**87208****(a)(7) POLICY**

Licensees are not required to submit blueprints or plans drawn to scale.

(a)(9) POLICY

The following information must be submitted to meet this requirement and the requirements of the above-mentioned sections:

1. Affidavit Regarding Client/Resident Cash Resources (LIC 400) (mandatory).
2. Surety Bond (LIC 402) (if applicable).
3. Method for safeguarding residents' personal property (type of form used) or Client/Resident Personal Property and Valuables (LIC 621).
4. Method for accounting for client funds (type of bank account form used, etc.) or Record of Client/Resident Safeguarded Cash Resources (LIC 405).
5. Method for safeguarding in excess of \$500 on the premises.

87209 PROGRAM FLEXIBILITY**87209****(b) POLICY**

A waiver may be granted when an applicant/licensee requests a variance to a specific regulation that relates to the overall operation of the facility.

An exception may be granted when an applicant/licensee requests a variance to a specific regulation on behalf of an individual(s) (e.g., a resident or an employee).

An approval must describe the alternate plan and specify the conditions under which the request is granted, including its duration. The duration of waivers/exceptions should be for the term of the license, or for a shorter period at the request of the applicant/licensee, or as deemed necessary by the licensing agency to ensure adequate and safe provision of services.

A denial must fully explain the basis for denial.

87209 PROGRAM FLEXIBILITY (Continued)**87209****PROCEDURE**

See Evaluator Manual Section 2-5000.

87211 REPORTING REQUIREMENTS**87211**(a)(1)(B) **POLICY**

Licenses must report any serious injury of a resident if the injury occurred while the resident was under facility supervision, even if the resident was not on the facility premises. The Unusual Incident/Injury Report (LIC 624) is available for this purpose.

If a facility is conducted by and entirely for the adherents of any well-recognized church or religious denomination that relies solely on prayer or other spiritual means of healing, Regulation Section 87211(a)(1)(B), which requires a physician's report, will be waived. However, the injury must be reported.

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

(a)(1)(C) **PROCEDURE**

See Regulation and Regulation Interpretations Section 87755.

87212 EMERGENCY DISASTER PLAN**87212**(c) **POLICY**

It is recommended that the disaster and mass casualty plan also include utility shut-off locations and the location of first aid supplies. Exit routes and telephone numbers should be posted on all floors. The plan should be posted by the telephone in the facility.

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

PROCEDURE

Review the facility plan to ensure that it is complete, accurate and updated as necessary to reflect any changes in the facility or the community.

87216 BONDING**87216**(a) **POLICY**

Health and Safety Code Section 1569.60(c) requires that the licensee be bonded if the total amount of residents' funds handled by the licensee in any month is \$50 or more per resident or \$500 or more for all facility residents.

87216 BONDING (Continued)**87216**

(a)

POLICY (Continued)

If a licensee operates more than one licensed facility, the bonding requirement may be met in either of the following ways:

1. A separate bond insuring each separate facility; or
2. A single bond insuring more than one facility provided that the bond specifies the following:
 - a. The name, address and facility number of each facility covered; and
 - b. The amount of bond coverage designed for each facility.

The documentation of Item 2 above must be in the form of an attachment provided by the Surety Company and attached to the Surety Bond (LIC 402). The attachment must be signed by the licensee and the Surety Company representative, and impressed with the Surety Company's seal.

A Surety Company is defined as a company that has contracted to be responsible for another, especially a company that assumes any responsibilities, debts or obligations in the event of the default of another.

The bond must cover any loss of resident monies that have been entrusted to the facility. (This must also include reimbursement for unused prepaid care.) This is commonly called a Community Care Surety Bond and does not require a criminal conviction to collect.

Time certificates or other interest accumulating certificates issued by a bank are not bonds.

No other form of financial guarantee or instrument, other than a surety bond, is acceptable.

PROCEDURE

Review the most recently completed Affidavit Regarding Client/Resident Cash Resources (LIC 400) for the facility to determine if the licensee reports handling residents' funds in the amount of \$50 or more per resident or \$500 or more for all residents per month.

(c)

PROCEDURE

Review the Affidavit Regarding Client/Resident Cash Resources (LIC 400) to determine if the licensee does or does not handle residents' cash resources. If residents' funds will be handled, verify that a current Surety Bond (LIC 402) is on file, is in an appropriate amount as required, and is properly signed and sealed by the Surety Company. See Regulation and Regulation Interpretations Sections **87208(a)(9)** and **87217** for requirements concerning the safeguarding of residents' funds.

**87217 SAFEGUARDS FOR RESIDENT CASH, PERSONAL PROPERTY
AND VALUABLES****87217****(a) POLICY**

The intent of this section is to safeguard residents' cash resources, personal property and valuables that are entrusted to the care of the licensee.

Handling of a Resident's Cash Resources

"Handling" of a resident's cash resources occurs if the licensee does any of the following:

1. Is appointed by the Social Security Administration as representative payee to manage a resident's Supplementary Security Income/State Supplementary Payment and/or Social Security check.
2. Takes a resident's signed check to the bank and returns the Personal and Incidental amount in cash to the resident.
3. Keeps a portion of the resident's money on the facility premises for disbursement when the resident so requests.
4. Maintains the resident's money in a bank, credit union or savings and loan account.
5. Makes purchases for the resident at the direction of the resident, the resident's representative payee or the responsible person [as defined in Regulation Section 87101 r(6)].

The licensee must document this responsibility for "handling" a resident's cash resources in the resident's admission agreement. The licensee is subject to the commingling prohibitions and the bonding and safeguarding requirements of Regulation Sections 87215 through 87217. Licensee-payees are also governed by federal rules. For more specific information, see Regulation Section 87217(d)(3).

When the Licensee Must Meet the Resident's Money Management Needs

The resident's preadmission appraisal must indicate the resident's ability to handle his/her own funds. Any significant changes in the resident's ability to handle his/her own funds must be documented in a reappraisal (see Regulation Interpretations Sections 87459 and 87463).

As provided in Regulation Section 87464(d), a licensee is not required to admit a prospective resident whose preadmission appraisal indicates that the individual is incapable of handling his/her own money. Likewise, a licensee is not required to retain a resident whose inability to handle money is not identified until after admission; the licensee has the option of evicting the resident under the provisions of Regulation Section 87224. However, if a licensee chooses to accept or retain an individual whose need for money management has been identified, the licensee must meet that need directly or through outside resources.

**87217 SAFEGUARDS FOR RESIDENT CASH, PERSONAL PROPERTY
AND VALUABLES (Continued)****87217****POLICY (Continued)**

Outside resources include a resident's representative payee or responsible person. If there is no representative payee or responsible person who is willing to accept money management responsibility, the licensee is responsible under Regulation Section **87217** for handling and safeguarding the resident's money--and is subject to the commingling and bonding provisions of Regulation Sections **87215** and **87216**.

The licensee may also handle a resident's money if requested to do so by a resident who is capable of handling his/her own funds, or by a resident's representative payee or responsible person. The licensee in this situation is also subject to the provisions of Regulation Sections **87215** through **87217**.

In all cases, the admission agreement must document who has money management responsibility.

(d)(3)

POLICY

Licensee-payees must comply with all bonding, safeguarding and accountability provisions in Regulation Sections **87215** through **87217**, since acting as payee constitutes handling of resident moneys.

Licensee-payees must meet the following state guidelines in handling the resident's Supplementary Security Income/State Supplementary Payment and/or Social Security benefits:

STATE GUIDELINES

1. The resident's record must contain a copy of the document from the Social Security Administration appointing, or terminating the appointment of, the licensee as payee.
2. The admission agreement must indicate if the licensee has been appointed as payee.
3. Personal and Incidental money must be protected as currently required.
4. To properly account for the use of Supplementary Security Income/State Supplementary Payment and/or Social Security benefits the payee has received, the payee must:

87217 SAFEGUARDS FOR RESIDENT CASH, PERSONAL PROPERTY AND VALUABLES (Continued) 87217**(d)(3) POLICY (Continued)**

- a. Meet the ledger accounting requirements contained in Regulation Section **87217**(g)(1). The full benefit allowances received are to be posted to the ledger as income. Then, those amounts paid to the licensee-payee for services are to be itemized separately as amounts disbursed. The remaining balance constitutes the cash resources of the resident and is to be accounted for in the normal manner.

Licensee-payees are also required by the Social Security Administration to follow federal regulations. Some of those regulations are highlighted below:

FEDERAL REQUIREMENTS

1. Licensees are not permitted to charge a Supplementary Security Income/State Supplementary Payment or Social Security beneficiary for acting as payee.
2. In managing a resident's Supplementary Security Income/State Supplementary Payment and/or Social Security benefit, the payee must attend to:
 - a. The resident's current maintenance (room, board, care and supervision, and personal and incidental needs identified by the payee and the resident); and
 - b. The resident's reasonably foreseeable needs, which are typically personal in nature (e.g., a winter coat or other seasonal clothing, holiday travel to visit relatives, medical needs not covered by Medi-Cal or Medicare, etc.).

Benefits not needed for current maintenance or reasonably foreseeable needs must be invested in an interest- or dividend-paying account in a bank, trust company, credit union or savings and loan association that is insured under federal or state law; or in U.S. Savings Bonds. Details of how accounts are to be held are contained in Item 4 below.

3. Unlike residents who receive a Supplementary Security Income/State Supplementary Payment check, residents who receive only Social Security do not have a specific portion of their income that is protected for personal and incidental needs. However, the payee is required by federal regulations to attend to the personal needs of the beneficiary, and the payee's use of the beneficiary's Social Security funds is subject to monitoring by the Social Security Administration.

**87217 SAFEGUARDS FOR RESIDENT CASH, PERSONAL PROPERTY
AND VALUABLES (Continued)****87217****(d)(3) POLICY (Continued)**

4. Any Supplementary Security Income/State Supplementary Payment or Social Security funds that are not needed for current maintenance or reasonably foreseeable needs must be invested for the resident when they exceed \$150. They must be invested in an interest- or dividend-paying checking or savings account in a bank, trust company, credit union or savings and loan association that is insured under federal or state law; or in U.S. Savings Bonds. Checking and savings accounts must show clearly that the payee has only a fiduciary and not a personal interest in the funds. Interest paid on the account belongs to the resident. Here are two recommended account titles:
- _____ (Payee's name),
representative payee for _____
(resident's name).
- Or
- _____ (Resident's name)
by _____ (Payee's name),
representative payee.
5. If the payee is changed by the Social Security Administration, the payee who has kept or invested benefits for a resident must transfer those funds and the interest earned on those funds to the successor payee, or to the Social Security Administration, as specified by the Social Security Administration. The resident's record must contain the document from the Social Security Administration indicating the payee change.

PROCEDURE**When the Payee Fails to Meet Guidelines or is Suspected of Misusing Benefits**

The state guidelines detailed above were issued in an all-licensee letter in January 1993. The analyst should verify that the licensee-payee is observing the guidelines. If the analyst determines that a licensee-payee is willfully violating the guidelines, the analyst should report the situation to the Audits Section of the Community Care Licensing Division.

**87217 SAFEGUARDS FOR RESIDENT CASH, PERSONAL PROPERTY
AND VALUABLES (Continued)****87217**

(d)(3)

PROCEDURE (Continued)

The federal requirements noted above were also contained in the January 1993 all-licensee letter. While the analyst is not responsible for monitoring the payee's compliance with federal requirements, it is appropriate for the analyst to notify the Social Security Administration and the Audits Section of the Community Care Licensing Division if he/she suspects that the licensee-payee is not following federal requirements.

To find the nearest Social Security Administration office, look in your local phone book under: "United States Government Offices, Health and Human Services Department, Social Security Administration." The appropriate contact person at the Social Security Administration is the Title XVI Supplemental Security Income Claims Representative for cases involving Supplementary Security Income/State Supplementary Payment monies only. For cases involving only Social Security, or both Social Security and Supplementary Security Income/State Supplementary Payment monies, the contact person is the Title II (Social Security) Claims Representative. (Claims representatives in some small Social Security Administration offices may routinely handle both types of cases.) Be prepared to give the Social Security Administration contact person the resident's social security number, if it is available. If the nearest Social Security Administration office does not handle that resident's case, a referral will be made to the correct Social Security Administration office. Document the name and telephone number of your Social Security Administration contact--and the action the Social Security Administration indicates it will take.

The Social Security Administration is responsible for investigating complaints of misuse of benefits and will take action to change payees, seek restitution or refer for prosecution, as appropriate. The Community Care Licensing Division is also responsible for investigating allegations of misuse of personal and incidental money and taking administrative action when appropriate.

(d)(4)

POLICY

This regulation prohibits a licensee or employee from becoming a joint tenant on any bank account with a resident, regardless of the method. The intent of this regulation is to safeguard resident money. However, a licensee or employee may be included on a "resident account" (trust account) that clearly notes that it is resident money and that the resident has access to the money upon demand. Note that this account is not the same as a joint account.

(f)

POLICY

Licensees who act as a payee will necessarily make expenditures from the resident's check(s) for basic services. However, the licensee is still prohibited by state law (Welfare and Institutions Code Section 11006.9) from obtaining any portion of the Supplementary Security Income/State Supplementary Payment personal and incidental needs allowance for the cost of basic services.

87217 SAFEGUARDS FOR RESIDENT CASH, PERSONAL PROPERTY AND VALUABLES (Continued)**87217****(f) PROCEDURE**

See Regulation Interpretations Section **87217** (d)(3) for detailed instructions.

(g)(1) POLICY

The Record of Client's/Resident's Safeguarded Cash Resources (LIC 405) is available for this purpose.

(g)(1)(B) POLICY

Licensing agencies must ensure that receipts contain the listed criteria. Licensees must ensure that all receipts are identified by the resident's name and expenditure.

(g)(2) POLICY

Licensees are responsible for safeguarding cash resources, personal property and valuables. The Client/Resident Personal Property and Valuables form (LIC 621) is available for this purpose.

When it is suspected that a licensee is not accounting for residents' cash resources in accordance with Regulation Section **87217**, request an audit. A request for an audit is normally made because there are clear reasons for doing so (e.g., a complaint from a third party, lack of records to establish personal and incidental balances, or a licensee's failure to substantiate that the accounting of personal and incidental money is adequate). The Evaluator Worksheet—Financial Records Review (LIC 423) will assist in determining if a request for an audit is appropriate when the types of clear indicators just described have not surfaced.

The licensee is responsible for entering the amount of money received and spent for a resident on the Record of Client's/Resident's Safeguarded Cash Resources (LIC 405) or a comparable ledger. The ledger must indicate the source of the funds (name of bank and account number), explanation (deposit or withdrawal), amount (of deposit or withdrawal), and the new balance. The LIC 405 is designed to show the balance of monies to be accounted for and safeguarded. Individual transactions of a checking or savings account would not be itemized on the ledger unless they reflected a change to the balance of monies being accounted for.

(g)(2) PROCEDURE

During the facility evaluation, review the individual accounts of residents to verify the proper recording of deposits, withdrawals and balances; and to determine that the Surety Bond (LIC 402) adequately covers the amount of cash maintained in the facility, plus cash resources entrusted to the licensee and deposited in a bank, savings and loan, or credit union as specified in Regulation Section **87217**(c). (See Regulation and Regulation Interpretations Section **87216**.)

**87217 SAFEGUARDS FOR RESIDENT CASH, PERSONAL PROPERTY
AND VALUABLES (Continued)****87217**

(k)(2)

PROCEDURE

If any questions arise regarding the accounting of resident cash resources, personal property and valuables during the application process for change of ownership, review the Record of Client's/Resident's Safeguarded Cash Resources (LIC 405) and the Client/Resident Personal Property and Valuables form (LIC 621), or comparable forms, to ascertain that the accounting submitted by the licensee is correct. Ensure that the Record of Client's Cash Resources for Change of Licensee (LIC 424) is submitted to the licensing agency.

(l)

POLICY

The licensing agency will review and maintain the Record of Client's Cash Resources for Change of Licensee (LIC 424) in the facility file.

(m)

POLICY

Regulation Section **87217(a)** applies to licensees only--not to employees. Licensees who handle resident money are required to record cash resources in a ledger account and to attach to the ledger any record of gifts received from a resident. Where resident money is not handled by the licensee, the record of gifts must be filed in the resident file pursuant to Regulation Section **87506(b)(15)**.

PROCEDURE

Any monetary gift or any gift, as described in this regulation, is to be recorded on the Record of Client's/Resident's Safeguarded Cash Resources (LIC 405) and the Client/Resident Personal Property and Valuables form (LIC 621).

Discuss any complex or questionable practices regarding the handling of cash resources, personal property and valuables of residents with the licensing supervisor for possible referral to Audits or the appropriate program investigation section.

87219 PLANNED ACTIVITIES**87219**

(f)

PROCEDURE

See Reference Material Section 2-5000, Waivers and Exceptions Guidelines.

(g)

POLICY

A volunteer is not to be used as the person responsible for planning, conducting or evaluating activities.

87219 PLANNED ACTIVITIES (Continued)**87219****(g) PROCEDURE**

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

(h)(2) POLICY

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

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

87221 RESIDENT COUNCILS**87221****PROCEDURE**

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

87224 EVICTION PROCEDURES**87224****(a) POLICY**

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

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

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

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

87224 EVICTION PROCEDURES (Continued)**87224****(a) POLICY (Continued)**

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

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

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

PROCEDURE

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

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

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

87224 EVICTION PROCEDURES (Continued)**87224****(a) PROCEDURE (Continued)**

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

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

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

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

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

87224 EVICTION PROCEDURES (Continued)**87224****(a) PROCEDURE (Continued)**

As a best practice, if the resident refuses to sign an updated admission agreement, the licensee should have documentation on file that the resident was notified on a specified date, but refused to sign. If a resident was admitted into a facility prior to January 1, 2010, the licensee of that facility must still comply with Health and Safety Code section 1569.683 pertaining to an eviction notice, even if the resident did not sign an updated admission agreement.

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

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

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

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

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

87224 EVICTION PROCEDURES (Continued)**87224****(a) PROCEDURE (Continued)**

clergy, referral agencies, case management agencies, multipurpose senior services programs, family members and social workers to comply with the requirement to include resources in the eviction notice.

The list may also refer the resident to the Community Care Licensing Division facility search feature at: https://secure.dss.cahwnet.gov/ccld/securenet/ccld_search/ccld_search.aspx

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

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

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

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

(a)(1) POLICY

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

87224 EVICTION PROCEDURES (Continued)**87224****(a)(1) POLICY (Continued)**

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

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

PROCEDURE

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

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

(a)(2) POLICY

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

87224 EVICTION PROCEDURES (Continued)**87224****(a)(3) POLICY**

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

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

PROCEDURE

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

(a)(4) POLICY

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

87224 EVICTION PROCEDURES (Continued)**87224****(a)(4) POLICY (Continued)**

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

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

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

Prohibited Health Conditions:

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

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

87224 EVICTION PROCEDURES (Continued)**87224****(a)(4) POLICY (Continued)**

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

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

PROCEDURE

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

Resident Relocated to Higher Level of Care:

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

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

(b) POLICY

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

87224 EVICTION PROCEDURES (Continued)**87224****(b) POLICY (Continued)**

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

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

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

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

PROCEDURE

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

87224 EVICTION PROCEDURES (Continued)**87224****(b) PROCEDURE (Continued)**

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

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

Documentation that the Licensing Program Analyst Must Review:

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

87224 EVICTION PROCEDURES (Continued)**87224****(b) PROCEDURE (Continued)**

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

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

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

(c) PROCEDURE

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

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

87224 EVICTION PROCEDURES (Continued)**87224****(c) PROCEDURE (Continued)**

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

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

(d) PROCEDURE

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

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

(e) PROCEDURE

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

87224 EVICTION PROCEDURES (Continued)**87224****(e) PROCEDURE (Continued)**

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

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

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

87224 EVICTION PROCEDURES (Continued)**87224****(e) PROCEDURE (Continued)**

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

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

(f) PROCEDURE

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

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

(g) POLICY

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

(h) POLICY

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

87224 EVICTION PROCEDURES (Continued)**87224****(h) POLICY (Continued)**

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

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

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

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

RCFE Licensees Must:

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

87224 EVICTION PROCEDURES (Continued)**87224****(h) POLICY (Continued)****The Eviction Notice in RCFEs Must Include the Following:**

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

ARTICLE 5. PHYSICAL ENVIRONMENT AND ACCOMMODATIONS**87303 MAINTENANCE AND OPERATION****87303****(a) POLICY**

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

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

87303 MAINTENANCE AND OPERATION (Continued)**87303****(a) PROCEDURE**

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

(a)(1) POLICY

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

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

PROCEDURE

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

(b)(2) POLICY

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

87303 MAINTENANCE AND OPERATION (Continued)**87303****(b)(2) PROCEDURE**

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

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

(e)(2) PROCEDURE

Check the temperature of water by using a holding thermometer.

(g)(2) POLICY

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

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

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

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

PROCEDURE

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

87303 MAINTENANCE AND OPERATION (Continued)**87303**

(i)(1)(A)

POLICY

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

(i)(2)

POLICY

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

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

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

87305 ALTERATIONS TO EXISTING BUILDINGS OR NEW FACILITIES 87305

(b)

POLICY

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

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

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

PROCEDURE

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

87305 ALTERATIONS TO EXISTING BUILDINGS OR NEW FACILITIES 87305

(Continued)

(b)

PROCEDURE (Continued)

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

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

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

87307 PERSONAL ACCOMMODATIONS AND SERVICES**87307**

(a)(2)(D)

POLICY

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

(a)(3)(B)

POLICY

Two residents sharing a bedroom may share one nightstand.

POLICY

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

(a)(3)(D)

POLICY

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

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

87307 PERSONAL ACCOMMODATIONS AND SERVICES (Continued) 87307**(a)(3)(D) POLICY (Continued)**

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

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

PROCEDURE

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

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

(a)(3)(E) POLICY

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

(a)(3)(F) POLICY

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

(c) POLICY

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

(d)(2) PROCEDURE

Also see Regulation and Regulation Interpretation sections 87303 and 87555.

(e) POLICY

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

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

87307 PERSONAL ACCOMMODATIONS AND SERVICES (Continued) 87307**(e) POLICY (Continued)****FENCES**

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

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

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

1. Bottom

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

2. Sides

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

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

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

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

87307 PERSONAL ACCOMMODATIONS AND SERVICES (Continued) 87307**(e) POLICY (Continued)****MESH FENCES**

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

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

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

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

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

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

WHERE THE FENCE IS ON TOP OF THE POOL STRUCTURE

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

87307 PERSONAL ACCOMMODATIONS AND SERVICES (Continued)**87307****(e) POLICY (Continued)****POOL COVERS**

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

PROCEDURE

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

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

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

OR

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

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

87309 STORAGE SPACE**87309****POLICY**

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

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

87312 MOTOR VEHICLES USED IN TRANSPORTING RESIDENTS**87312****POLICY**

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

PROCEDURE

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

ARTICLE 6. BACKGROUND CHECK**87356 CRIMINAL RECORD EXEMPTION****87356**

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

POLICY

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

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

87356 CRIMINAL RECORD EXEMPTION (Continued)**87356**

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

POLICY (Continued)

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

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

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

PROCEDURE

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

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

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

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

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

1. Inform the licensee or designee that a citation for failure to return the Confirmation of Removal form will be issued by mail, unless a site visit is made to issue the citation (see C. below). The citation will be issued on the LIC 809 Facility Evaluation Report.
2. Require the licensee or designee, as a plan of correction, to fax or deliver the Confirmation of Removal form to the Regional Office by the close of the next business day.

The Confirmation of Removal forms are available to the public at the Department's website at: www.ccl.d.ca.gov. Internet access is available at most public libraries. The Licensing Program Analyst will inform the licensee or designee of the correct Confirmation of Removal form to complete if the licensee indicates that they no

87356 CRIMINAL RECORD EXEMPTION (Continued)**87356**

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

PROCEDURE (Continued)

longer have the form. (Note: if the licensee returns the wrong Confirmation of Removal form, it is acceptable as long as the identifying information on the form is completed for both the individual removed and the licensee.)

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

The following is sample language to use for the citation:**Citation with Plan of Correction Completed and Deficiency Cleared**

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

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

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

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

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

87356 CRIMINAL RECORD EXEMPTION (Continued)**87356**

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

PROCEDURE (Continued)

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

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

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

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

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

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

ARTICLE 7. PERSONNEL**87405 ADMINISTRATOR – QUALIFICATIONS AND DUTIES****87405**

(a)

POLICY

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

87405 ADMINISTRATOR – QUALIFICATIONS AND DUTIES
(Continued)**87405****(a) POLICY (Continued)**

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

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

PROCEDURE

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

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

(d) POLICY

There is no formal experience required for administrators of facilities with a licensed capacity of fewer than 16 residents, providing the administrator has completed a 40-hour certification program prior to licensure. However, administrators or applicants of these facilities are still required to have the knowledge and abilities required to properly run the facility. This means that once an administrator is employed, this knowledge and these abilities must be continually demonstrated by the proper running of the facility. Based upon

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

observation of conditions, a facility could be cited for not having an administrator who meets these qualifications even though he/she was initially thought to possess them and was approved to be hired.

(e) and (f) POLICY

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

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

References must be used to verify experience requirements.

PROCEDURE

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

(g) POLICY

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

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

As a general guideline, courses are acceptable if:

1. They are provided by a person who possesses the skill and knowledge necessary to teach others in a particular subject area (that is, a professional or expert in that field); and

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

2. They will enhance the administrator's ability to attain the knowledge and abilities outlined in Regulation Section 87405(d) and to meet the responsibilities outlined in Regulation Section 87405(i).

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

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

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

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

PROCEDURE

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

(h) POLICY

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

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

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

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

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

(i)(5) and (6) POLICY

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

87411 PERSONNEL REQUIREMENTS - GENERAL**87411****(a) POLICY**

In facilities licensed for 16 or more residents, the licensing agency will pay particular attention to the need for additional support staff, based on such factors as use of postural supports (see Regulation and Regulation Interpretations section 87608), bathing, sleeping and eating schedules, lack of necessary supervision, etc. As a general rule of thumb, if a licensee is cited for recurring violations (such as poor maintenance of the facility or lack of provision of basic services, etc.), that could indicate insufficient staff.

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

PROCEDURE

The ratio of on-duty staff to residents should be observed during site visits. The following should be reviewed: the Personnel Report (LIC 500); the Personnel Record (LIC 501); the Preplacement Appraisal Information (LIC 603); the Appraisal/Needs and Services Plan (LIC 625); and other documents as appropriate to determine if a facility has sufficient support staff to meet the requirements of this regulation and Regulation section

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

87608. It is advisable to schedule visits during hours when the facility is fully functioning (e.g., during bathing, eating or activities). The Facility Evaluation Report (LIC 809) or the Complaint Investigation Report (LIC 9099) should be used to document the need for additional staff.

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

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

Privately paid personal assistants may only provide services other than those the licensee is required to provide. The licensee must provide the basic services specified in Regulation section 87464(f) and the personal assistance and care specified in Regulation section 87608(a). However, privately paid personal assistants can provide services such as companionship, or additional baths beyond what the licensee is required to provide. They can also assist with self-administration of medication, but only if the resident’s physician documents that the resident can store and administer his/her own medications. A privately paid personal assistant **cannot** assist the resident with care relating to any of the incidental medical services described in Regulation sections 87605 through 87631.

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

CRIMINAL RECORD CLEARANCE

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

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

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

HEALTH SCREENING AND TUBERCULOSIS TESTS

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

REPORTING REQUIREMENTS

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

(c) POLICY

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

(c)(1) POLICY

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

87411 PERSONNEL REQUIREMENTS – GENERAL (Continued)**87411****(c)(1) POLICY (Continued)**

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

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

PROCEDURE

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

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

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

(f) POLICY

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

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

1. The entire administrative staff must be adherents of the religion.
2. All residents admitted to the facility must be adherents of the religion.

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

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

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

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

(g) POLICY

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

(h) POLICY

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

(i) PROCEDURE

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

(j) POLICY

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

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

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

87412 PERSONNEL RECORDS 87412**(a) POLICY**

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

PROCEDURE

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

(a)(4) POLICY

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

(b) POLICY

See Regulation and Regulation Interpretations section 87411(f).

87413 PERSONNEL - OPERATIONS 87413**(b) PROCEDURE**

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

87415 NIGHT SUPERVISION 87415**(a)(1)-(4) POLICY**

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

87415 NIGHT SUPERVISION (Continued)**87415****(a)(1)-(4) POLICY (Continued)**

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

(a)(5) POLICY

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

ARTICLE 8**RESIDENT ASSESSMENTS, FUNDAMENTAL SERVICES AND RIGHTS****87455 ACCEPTANCE AND RETENTION LIMITATIONS****87455****(b)(6) POLICY**

Health and Safety Code Section 1569.2(k) defines a residential care facility for the elderly as a group housing arrangement chosen voluntarily by residents over the age of 60. But a residential care facility for the elderly may also accept persons under the age of 60 with compatible needs. Licensees are **not** required to obtain an exception for residents under the age of 60 as long as the number of persons under the age of 60 does not exceed 25 percent of the residents. The licensee is responsible, however, for determining (1) that the needs of a resident under the age of 60 are compatible with those of elderly residents in care and (2) that the facility can meet those needs. [See also Regulation sections 87455(c)(3) and (c)(4).] The licensee must ensure the compatibility of nonelderly persons by screening such prospective residents in compliance with Regulation sections 87458, 87457, 87459, 87461 and 87462. The licensee is also responsible for documenting the assessment and determination of compatibility in the resident's record as set forth in Regulation section 87505.

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

(b)(6)

PROCEDURE

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

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

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

(c)(1)

POLICY

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

PROCEDURE

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

(c)(3)(B)

POLICY

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

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

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

(c)(3)(B)

PROCEDURE

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

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

(c)(4)

POLICY

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

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

1. requires assistance in turning and repositioning in bed;

or

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

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

PROCEDURE

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

1. Review the resident's file, with particular attention to the Physician's Report (LIC 602 or 602A) and the Preplacement Appraisal (LIC 603 or 603A). If the LIC 602 or 602A indicates that the resident is bedridden, check for the expected date of recovery. Also look for hospital or emergency room discharge papers, since the LIC 602 or 602A may not be current. If the LIC 602 or 602A is not current, cite Regulation sections 87506(a) and (b)(8), and require a new assessment.
2. Interview facility staff, asking specifically what kind of help they give the resident while he/she is in bed.

87455 ACCEPTANCE AND RETENTION LIMITATIONS (Continued)**87455****(c)(4) PROCEDURE (Continued)**

3. Observe the resident. Have a facility employee ask the resident to demonstrate that he/she can turn and reposition in bed without help.

POLICY

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

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

A licensed health care professional means a physician or a person licensed or certified under Division 2 of the Business and Professions Code to perform necessary resident care procedures prescribed by a physician. Health care professionals include registered nurses, public health nurses, licensed vocational nurses, psychiatric technicians, physical therapists, occupational therapists and respiratory therapists.
 - b. The facility must maintain training documentation in each staff member's personnel file, including the name and a copy of the current California license of the health care professional who trained the staff member; the date the training occurred; and the topics covered.
 - c. The licensee has night staff capable of repositioning the bedridden resident.
 - d. The licensee has 24-hour telephone access to a licensed medical doctor, nurse practitioner or registered nurse should questions arise concerning the bedridden person's condition. This contact information must be current and readily available to staff.

87455 ACCEPTANCE AND RETENTION LIMITATIONS (Continued)

87455

POLICY (Continued)

- e. The plan of operation must include the type of care the facility will provide to bedridden persons.
- f. The licensee has indicated what equipment and appliances are available to assist and protect bedridden residents. Equipment and appliances may include, but are not limited to:
 - Egg-crate mattress (or equivalent to relieve pressure)
 - Heel and elbow protectors
 - Partial bed rails (An exception is not required for a bedridden person.)
 - Screens and/or curtains to ensure privacy if the resident shares a room with another resident
 - Over-bed table
 - Bedside commode
 - Urinal
 - Bed pan
 - Wheelchair
3. The licensee must notify the licensing agency if a new bedridden person will be placed in the facility; or if building modifications are planned that would affect the existing fire clearance. The licensing agency will determine whether a new bedridden fire clearance is required.
4. Any other changes to the status of the license, the licensee, the licensing category, the location of the facility, etc., will require a new bedridden fire clearance.

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

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

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

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

(d)(1)

POLICY

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

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

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

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

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

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

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

(d)(2)

POLICY

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

PROCEDURE

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

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

(f)(3)

POLICY

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

87455 ACCEPTANCE AND RETENTION LIMITATIONS (Continued) 87455**(f)(3) POLICY (Continued)**

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

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

(g) POLICY

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

87456 EVALUATION OF SUITABILITY FOR ADMISSION 87456**(a)(1) POLICY**

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

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

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

(a)(3) POLICY

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

PROCEDURE

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

87457 PRE-ADMISSION APPRAISAL**87457****(a) POLICY**

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

PROCEDURE

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

(c)(4) POLICY

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

PROCEDURE

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

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

87458 MEDICAL ASSESSMENT**87458**

Health and Safety Code Section 11362.5 permits the use of medical marijuana for medical purposes and provides the following:

- Medical use of marijuana must be "recommended by a physician who has determined that the person's health would benefit" from the use of marijuana in the treatment of a specified disease and illness "or any other illness for which marijuana provides relief."
- The person for whom marijuana has been recommended may designate a "primary caregiver" defined as the individual "who has consistently assumed responsibility for the housing, health, or safety" of that person.
- Both the patient and the patient's primary caregiver are allowed to possess or cultivate marijuana for the personal medical purposes of the patient.

Note: Licensees caring for clients who have a designated primary caregiver or who cultivate marijuana for medical purposes pursuant to the Medical Marijuana Program are not in violation of licensing laws unless the facts and circumstances create conditions that can be viewed as conduct inimical to the health, safety, or welfare of clients in care.

87458 MEDICAL ASSESSMENT (Continued)**87458**

Medical marijuana comes in various forms, including plant, tinctures and candies; it does not include Marinol, a prescription drug containing a synthetic form of tetrahydrocannabinol (THC).

Medical marijuana in smoking form remains subject to the smoking restrictions in other laws and regulations (Health and Safety Code, Section 11362.785(a) and 11362.79).

If a resident possesses marijuana which has been recommended by a licensed physician for medicinal use and the facility complies with applicable regulations regarding the storage, administration, and documentation of such medication, then there is no violation with regard to such possession, storage and use of marijuana by the patient-resident.

The determination of acceptance and retention of a resident is based on the licensee's ability to ensure the health and safety of the individual resident and the other residents in care. Licensees continue to have discretion in evaluating a resident's suitability for acceptance and retention and to stipulate conditions in the admission agreements.

(a)

POLICY

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

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

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

PROCEDURE

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

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

(b)(1) and (c) PROCEDURE

The resident's medical marijuana should be received and documented in the same manner as all other medications. Prior to accepting a person as a resident, the licensee must obtain documentation of a medical assessment, signed by a physician, which must include a record of all medications. In addition, a resident's record in a facility must contain the report of the medical assessment, a record of current medications, and instructions, if any, regarding control and custody (storage) of medications (California Code of Regulations, Title 22, Section 80070(8), (10)).

The requirements for accepting individuals who use medical marijuana are the same as with other medications. The individual who has a recommendation for medical marijuana would need:

A physician's written recommendation that includes the following:

- The resident's name
- The physician's name
- The drug name

Optional information that may also be provided:

- The recommended dosage
- The recommended hours between doses and the recommended maximum 24-hour dose
- The form in which the medical marijuana will be used
- A statement about the person's ability/inability to self-administer medical marijuana

State law does not require specific dosage information for medical marijuana; therefore, it is treated like a PRN medication. However, if specific instructions are provided by the recommending physician they shall be followed.

Because of existing medical and legal issues relating to medical marijuana dosages, assistance with the self-administration of medical marijuana may be provided only to residents who are able to determine and communicate their own personal needs for the medication. An exception may be considered if specific dosage and usage instructions are provided by the recommending physician.

87459 FUNCTIONAL CAPABILITIES**87459****(a) POLICY**

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

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

PROCEDURE

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

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

87461 MENTAL CONDITION**87461****POLICY**

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

PROCEDURE

See Regulation and Regulation Interpretations sections 87457 and 87459.

87462 SOCIAL FACTORS**87462****POLICY**

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

PROCEDURE

See Regulation and Regulation Interpretations sections 87457 and 87459.

87463 REAPPRAISALS**87463**

(a)

POLICY

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

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

(b)

POLICY

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

PROCEDURE

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

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

See Regulation and Regulation Interpretations section 87455.

87464 BASIC SERVICES**87464****(d) PROCEDURE**

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

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

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

(e)(2) POLICY

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

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

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

(e)(3) POLICY

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

(e)(2) and (3) PROCEDURE

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

87464 BASIC SERVICES (Continued)**87464****(f) POLICY**

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

(f)(5) POLICY

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

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

PROCEDURE

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

87465 INCIDENTAL MEDICAL AND DENTAL CARE SERVICES**87465****(a)(2) POLICY**

The licensee is responsible for either directly transporting or arranging for the transporting of residents to and from medical and dental appointments. This responsibility is considered a basic service, and transportation must be available at times that ensure that residents’ medical and dental care needs are promptly met.

It is not unreasonable for facilities to designate certain days of the week and a range of times that residents will be encouraged to schedule medical and dental appointments. Predetermined times must meet the needs of ALL residents. It is not acceptable for a facility to limit the availability of transportation to the degree that it hampers a resident’s ability to access medical and dental care, including but not limited to regular checkups.

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).

87468 PERSONAL RIGHTS (Continued)**87468****(a)(10) POLICY**

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

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

(a)(14) POLICY

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

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

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

PROCEDURE

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

(b) POLICY

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

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

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

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

ARTICLE 9. RESIDENT RECORDS**87506 RESIDENT RECORDS****87506****(b) PROCEDURE**

The resident's medical marijuana should be received and documented in the same manner as all other medications. A resident's record in a facility must contain the report of the medical assessment, and a record of any current centrally stored medications (California Code of Regulations, Title 22, Section 87506 (b)(8), (b)(12).)

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

(b)(5) PROCEDURE

For information relative to waivers of other regulations for religious facilities, see Regulation and Regulation Interpretations for Residential Care Facilities for the Elderly, Section 87411(f).

(c) POLICY

During the process of selling or transferring property the licensee may be asked to or may have provided information about the residents cared for at the facility to persons interested in taking control of the facility. A resident's confidentiality must be respected even during the sale and transfer of property. For example, the range of care needs of the residents in general can be provided however identifying information about the individual resident would be violating the confidentiality of the resident. The party interested in buying or taking possession of the property would have a right to the confidential information if the party became the licensee or is associated with the facility as an employee. Any violation by sharing confidential information during the process of selling or transferring property must be cited by the licensing program analyst.

(c)(1) PROCEDURE

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

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

87506 RESIDENT RECORDS (Continued)**87506****(c)(1) PROCEDURE (Continued)**

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

- the representative has the permission of the resident or the legal representative of the resident; OR
- the resident is unable to consent to the review and has no legal representative; OR

(c)(1) PROCEDURE (continued)

- access to the records as is necessary to investigate a complaint if:
 - a legal guardian of the resident refuses to give the permission;
 - a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and
 - the representative obtains the approval of the Ombudsman.

87507 ADMISSION AGREEMENTS**87507****(a) POLICY**

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

PROCEDURE

Review the signed admission agreement for compliance with these requirements.

(c) POLICY

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

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

Supplementary Security Income/State Supplementary Payment Recipients:

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

Private Pay:

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

1. A fixed amount for all services to be provided. The resident is informed on the admission agreement of all the services to be provided and the monthly fee for the services. The resident pays the fixed monthly fee regardless of whether or not each and every service is used.

87507 ADMISSION AGREEMENTS (Continued)**87507**(c) **POLICY** (Continued)

The facility must meet all of the resident's basic services needs for the fixed monthly fee. The licensee may (but does not have to) reduce the fixed fee because of services not used by the resident but may not **increase** the fee.

2. A fee for each and every service to be provided. The resident selects and pays for only those services that he or she needs and wants, and does **not** pay for services that he or she does **not** need or want (e.g., daily breakfast). The list of services is part of the admission agreement. Basic services (as identified in regulations) must be delineated as basic services, and any optional services (such as cosmetology and barbering) must be delineated as optional services.
3. A combination of (1) and (2) above. The licensee provides the resident with two separate lists of services. One list includes those services that will be provided for a fixed fee. The other list includes additional services with an individual fee for each service, such as additional baths above what the licensee offers for the fixed fee. Whether included in the fixed fee list or additional services list, basic services must be delineated as basic services, and any optional services must be delineated as optional services.

(c) **POLICY**

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

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

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

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

87507 ADMISSION AGREEMENTS (Continued)**87507****(c)(3) POLICY**

There is no prohibition against charging community and assessment fees to private pay residents if the resident agrees in the Admission Agreement. Previously statute (and regulations) provided no specific guidelines regarding the charging of this type of fee (designated by different names). However, effective January 1, 2003, Senate Bill 1898 will provide guidelines. The bill permits licensees to charge a single preadmission fee to private-pay residents of Residential Care Facilities for the Elderly, as long as the licensee provides the applicant with a written statement of costs relating to the preadmission fee, and a statement about whether or not the fee is refundable and the conditions for a refund.

[Note: Deposits related to damages are prohibited in residential care facilities for the elderly. A licensee may not charge a resident first and/or last month's rent as this is considered a deposit related to damages.]

(c)(4) POLICY

The basic rate change for residents who are Supplementary Security Income/State Supplementary Payment recipients cannot exceed the government-prescribed rate.

Refer to Regulation Sections 87101(b)(1) and 87464 for clarification. (See Appendix for current year Supplementary Security Income/State Supplementary Payment standards.)

(c)(4)(A) POLICY

Modifications to admission agreements may be made without developing a new admission agreement provided that the changes are initialed and dated by the appropriate persons as specified in Regulation Section 87507(e).

(c)(10) POLICY

The admission agreement cannot specify an expiration or termination date. Regulation Section 87224, Eviction Procedures, prescribes the grounds for terminating a resident's contract.

(g) POLICY

This regulation does not preclude contractual arrangements such as life care contracts or payments ordered by a court of competent jurisdiction.

87508 REGISTER OF RESIDENTS**87508****(a)(2) POLICY**

The Register of Facility Clients/Residents (LIC 9020) is available to licensees for this purpose. Licensees must keep this information in a single location for all residents. One list may be used for all residents, or a separate sheet may be used for each resident.

87508 REGISTER OF RESIDENTS (Continued)**87508****(a)(2) POLICY (Continued)**

However, if separate sheets are used, they must be stored in a single folder or binder to ensure that information on all residents is centrally located. All information must be legible.

PROCEDURE

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

ARTICLE 10. FOOD SERVICES**87555 GENERAL FOOD SERVICE REQUIREMENTS****87555****(a) PROCEDURE**

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

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

(b)(2) POLICY

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

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

87555 GENERAL FOOD SERVICE REQUIREMENTS (Continued)**87555****(b)(2) PROCEDURE**

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

(b)(3) POLICY

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

(b)(7) PROCEDURE

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

(b)(8) PROCEDURE

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

(b)(12) POLICY

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

(b)(13) POLICY

This requirement may be waived if the food is canned using the procedures recommended by the University of California Agricultural Extension Service. The University of California publishes booklets for a nominal fee that explain how to can fruits and vegetables. The booklets can be obtained by writing to: University of California, ANR Communication Services, 6701 San Pablo Avenue, Oakland, CA, 94608-1239. The phone number is 800-994-8849; the fax number is (510) 643-5470. A catalog of available booklets can also be obtained at the same address and phone number.

87555 GENERAL FOOD SERVICE REQUIREMENTS (Continued)**87555**

(b)(13)

PROCEDURE

If a waiver has been obtained for the use of home-canned foods, ensure that licensees are aware of and are following appropriate canning procedures by interviewing those responsible for canning and requiring them to produce a copy of a booklet(s) on canning published by the University of California. If any of the conditions of the waiver are violated, cite the licensee on the Facility Evaluation Report (LIC 809).

If it is determined during the site visit that home-canned foods are being used without a waiver, inform the licensee that any unused home-canned foods cannot be served to residents and that further canning must cease unless a waiver is obtained. Cite the licensee on the (LIC 809).

(b)(14)

POLICY

The phrase “off the facility premises” means that the facility is purchasing from/contracting with an outside vendor to prepare meals.

If there is any question that the outside vendor meets the requirements for commercial food services, contact the local Environmental Health Office for verification of licensure.

(b)(17)

POLICY

The consultation should be during at least one meal preparation and service, and should include review and approval of the facility’s food planning, preparation and service procedures.

A copy of the bill for services is an acceptable record of the consultant’s visit(s) if the billing information includes the specific nature and duration of the visit.

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

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

PROCEDURE

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

87555 GENERAL FOOD SERVICE REQUIREMENTS (Continued)**87555****(b)(17) PROCEDURE (Continued)**

Examples include but are not limited to: milk and other dairy products; meat; fish; poultry; eggs; fresh fruits and vegetables; bread and other baked products; all prepared items; and leftovers such as thawed frozen foods and opened canned foods. Perishables must be stored in covered containers at 40 degrees F or less.

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

(b)(27) PROCEDURE

Check the following:

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

(b)(31)(B) POLICY

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

PROCEDURE

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

87555 GENERAL FOOD SERVICE REQUIREMENTS (Continued)**87555****(c) POLICY**

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

PROCEDURE

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

ARTICLE 11.**HEALTH –RELATED SERVICES AND CONDITIONS****87608 POSTURAL SUPPORTS****87608****(a) POLICY**

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

(a)(1) POLICY

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

(a)(3) POLICY

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

87608 POSTURAL SUPPORTS (Continued)**87608****(a)(3) POLICY (Continued)**

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

(a)(4) POLICY

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

(a)(4) PROCEDURE

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

(a)(5) POLICY

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

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

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

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

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

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

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

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

PROCEDURE

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

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

Hepatitis C is not treated unless it becomes chronic. A physician will determine what course of medical intervention is necessary, if treatment is needed. Chronic Hepatitis C is treated with drugs that slow or stop the virus from damaging the liver. Chronic Hepatitis C is most often treated with a drug combination, which can be taken through weekly injections and/or taken daily by mouth. Treatment for Hepatitis C usually lasts from 24 to 48 weeks.

If a resident cannot self-inject and needs an injection to treat the virus, then an appropriately skilled professional must be available to meet those needs, and the requirements for injections must be met as specified in California Code of Regulations, title 22, section 87629. California Code of Regulations, title 22, section 87303(f), Maintenance and Operation, specifies how waste shall be stored and disposed of, which includes information on solid waste and needles and syringes (which may be needed to treat the Hepatitis C virus).

87615 PROHIBITED HEALTH CONDITIONS 87615**(a)(4) POLICY**

Some bacteria that can cause infection have developed a resistance to certain antibiotics. Among these are methicillin-resistant staphylococcus aureus (MRSA) and vancomycin-resistant enterococci (VRE). Antibiotic resistant bacterial infections are most often contracted in hospitals and brought into facilities by patients upon hospital discharge. The elderly are at high risk because their health and immune systems are generally less robust than those of younger people.

If a resident is diagnosed with a methicillin-resistant staphylococcus aureus or vancomycin-resistant enterococci infection, the resident must be relocated elsewhere, such as to an acute care hospital or a skilled nursing facility, until the infection is cleared unless the facility applies for and receives an exception. Regulation section 87616, Incidental Medical Related Services Exceptions, allows a licensee to submit a written exception request if he/she agrees that the resident has a prohibited health condition but believes that the intent of the law can be met through alternative means.

87615 PROHIBITED HEALTH CONDITIONS (Continued)**87615**

(a)(4)

POLICY (Continued)

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

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

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

87615 PROHIBITED HEALTH CONDITIONS (Continued)**87615****(a)(4) POLICY (Continued)**

In addition, the following factors should also be considered:

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

87617 DEPARTMENTAL REVIEW OF HEALTH CONDITIONS**87617****(a) POLICY**

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

PROCEDURE

See Regulation Interpretation section 87455 for detailed instructions.

87618 OXYGEN ADMINISTRATION – GAS AND LIQUID**87618****(b)(3)(C) POLICY**

The regulatory prohibition against smoking where oxygen is in use covers all smoking, including, but not limited to, the smoking of tobacco, herbs, and medical marijuana (Health and Safety Code Section 11362.785(a) and 11362.79).

87618 OXYGEN ADMINISTRATION – GAS AND LIQUID (Continued)**87618**

(b)(3)(F)

POLICY

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

1. The plastic tubing from the nasal cannula (mask) to the oxygen source must be long enough to allow the resident movement within his/her room but cannot constitute a hazard to the resident or others. Things that may impact resident's safety include:
 - Whether the resident is in a private or shared bedroom
 - Whether the physical layout of the facility is appropriate for longer tubing so that no one in the facility will trip or accidentally disconnect the tubing

87618 OXYGEN ADMINISTRATION – GAS AND LIQUID (Continued)**87618**

(b)(3)(F)

POLICY (Continued)

- Whether there are residents in the facility with physical disabilities (e.g., who have difficulty seeing and/or trouble walking/moving) for whom long tubing may pose a hazard
 - Whether the resident with lengthy oxygen tubing uses a portable source of oxygen outside of his/her room
2. An appropriately skilled professional or vendor must check the oxygen tubing to make sure it will operate safely and properly

(c)(1)

POLICY

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

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

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

87619 INTERMITTENT POSITIVE PRESSURE BREATHING (IPPB) MACHINE 87619

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

87628 DIABETES POLICY 87628

See Regulation Interpretation section 87629

87629 INJECTIONS 87629

(a) **POLICY**

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

PROCEDURE

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

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

(b)(1) **POLICY**

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

PROCEDURE

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

(b)(2) **POLICY**

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

87629 INJECTIONS (Continued)**87629**(b)(2) **POLICY** (Continued)

Prefilled by a Registered Nurse – Insulin Only

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

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

Prefilled by the Pharmacy or the Manufacturer

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

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

PROCEDURE

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

POLICY

Hospice Care Waivers and Total Care Exception Requests

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

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

PROCEDURE

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

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

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

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

PROCEDURE (continued)

This process is as follows:

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

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

PROCEDURE (continued)

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

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

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

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

87633 HOSPICE CARE FOR TERMINALLY ILL RESIDENTS**87633****POLICY**

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

PROCEDURE

As part of the evaluation visit, verify the following:

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

87633 HOSPICE CARE FOR TERMINALLY ILL RESIDENTS (Continued) 87633**(a)(3) POLICY**

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

(a)(6) PROCEDURE

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

(b)(4)(B) POLICY

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

(b)(5) POLICY

A relative or friend NOT receiving monetary or any other form of compensation for their services, and is trained by the hospice agency may administer medications through a route, (e.g. oral, sublingual, subcutaneous, etc.) to his/her relative or friend in a residential care facility for the elderly provided it is specified in the hospice care plan; the hospice agency provides a statement for the licensee's records that the relative or friend has been trained; and there is a plan in place to ensure that the resident can receive the needed medication by a licensed health professional if the relative or friend fails to arrive at the appointed time. Medications may be set up in advance for a period not to exceed 24 hours.

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

- Only a registered nurse may pre-draw the medication for later administration; and
- The pre-drawn medication in the individual syringe or oral dosing unit must be labeled and properly stored.

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

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

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

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

(h) POLICY

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

(h)(2) Repealed 8-1-05 POLICY**(h)(5) POLICY**

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

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

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

(l) POLICY

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

1. The licensee must obtain and maintain a bedridden fire clearance, as required by Health and Safety Code sections 1569.72 (c) and 1569.73 (h), if the resident will be bedridden for more than fourteen (14) days. If the resident will be bedridden for 14 days or less, the licensee is not required to obtain and maintain a fire clearance.

87633 HOSPICE CARE FOR TERMINALLY ILL RESIDENTS (Continued) 87633**(1) POLICY (continued)**

2. The licensee must notify the local fire authority, as required by Health and Safety Code Sections 1569.72 (f) and 1569.73 (h), within forty-eight (48) hours of admitting or retaining a resident who is bedridden, regardless of the length of time the resident will be bedridden.

These requirements apply even if a resident is on hospice.

PROCEDURE

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

87638 RESIDENT REQUEST FOR REVIEW OF HEALTH CONDITION RELOCATION ORDER 87638**(a) PROCEDURE**

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

87640 TRANSFER DEPENDENCY 87640

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

ARTICLE 12. DEMENTIA**87705 CARE OF PERSONS WITH DEMENTIA 87705****(a) POLICY**

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

The licensee must meet the requirements in California Code of Regulations, title 22, section 87705, Care of Persons with Dementia, for any resident diagnosed by a physician as having dementia, regardless of whether it is a primary or secondary diagnosis. In addition to the requirements in California Code of Regulations, title 22, section 87705, licensees who advertise, promote or otherwise hold themselves out as

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

providing special care, programming, and/or environments for residents with dementia or related disorders shall also meet the specified requirements in California Code of Regulations, Title 22, section 87706 (Advertising Dementia Special Care, Programming, and Environments) and section 87707 (Training Requirements if Advertising Dementia Special Care, Programming, and Environments). Licensees of a residential care facility for the elderly who accept residents diagnosed with dementia are not required to have a special program for dementia if the licensees do not advertise, promote or otherwise hold themselves out as providing special care, programming, and/or environments for residents with dementia.

PROCEDURE

Review the residents' physician reports to determine if any residents have been diagnosed with dementia. The "Physician's Report for Residential Care Facilities for the Elderly" (LIC 602A) may be used to determine whether the requirements in California Code of Regulations, Title 22, section 87705 apply, since the form has an explanation of both dementia and mild cognitive impairment and has boxes that the physician may check for those diagnoses. If the licensee does not use the "Physician's Report for Residential Care Facilities for the Elderly," review the documentation from the physician in the residents' files to determine if any residents have a diagnosis of dementia. Residents must be regularly observed for changes in behavior, as required in California Code of Regulations, Title 22, section 87466, Observation of the Resident, and must be reappraised on an ongoing basis, as required in California Code of Regulations, Title 22, section 87463, Reappraisals. If a resident displays behaviors such as wandering or elopement attempts, the licensee shall follow the requirements outlined in California Code of Regulations, Title 22, section 87705(k)(7), and facilitate the resident's reassessment by his or her primary care physician or medical specialist, such as a geriatrician or a neurologist, as the resident may have a newly identified diagnosis of dementia.

(b) POLICY

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

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

with dementia, yet has wandering behavior. The licensee would need to assess the resident and develop a care plan for that behavior to ensure that the resident's care and supervision needs are met.

PROCEDURE

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

(b)(1) POLICY

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

(b)(2) POLICY

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

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

(b)(2)

PROCEDURE

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

(c)(1)

POLICY

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

(c)(2)

POLICY

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

(c)(3)

PROCEDURE

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

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

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

(c)(3)(C)

POLICY

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

(c)(5)

PROCEDURE

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

(c)(5)(A)

POLICY

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

(c)(7)

POLICY

Activity programs must be appropriate for persons with dementia. Licensees who need assistance in developing activity programs may seek the assistance of experts in dementia care, including the local chapter of the Alzheimer's Association. California Code of Regulations, title 22, section 87706(a)(2)(E) provides examples of activities to consider for residents with dementia, as well as a listing of items to consider when determining appropriate activities for these individuals. For example, if a facility has residents with sundowning behavior, it would be beneficial to have activities available to decrease the effects of that behavior, including, but not limited to, increasing outdoor activities in appropriate weather conditions and possibly including some type of night time activities.

If a facility admits or retains a resident with sundowning behavior, sufficient staff to care for and supervise the resident's behavior is required. If a resident is awake during night time hours, appropriate activities shall be available to meet the specific needs of the resident.

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

The need for a facility to meet the physical plant requirements should be based upon resident actions and behaviors rather than solely on diagnosis. Facilities that care for residents with dementia may be flexible in the use of alternative concepts, procedures, techniques, equipment and space.

Licenses who advertise, promote, or otherwise hold themselves out as special care, programming, and/or environments for residents with dementia or related disorders must also meet the requirements in California Code of Regulations, title 22, section 87706(a)(2)(H), in addition to the physical plant requirements in California Code of Regulations, title 22, sections 87705(d), (e), (f), (h) and (j).

(e) POLICY

California Code of Regulations, title 22, section 87307(e) specifies that facilities providing services to residents who have physical or mental disabilities shall assure the inaccessibility of fishponds, wading pools, hot tubs, swimming pools, or similar bodies of water, when not in active use by residents, through fencing, covering or other means. In addition, there must be adequate staffing to directly oversee the health and safety of all residents.

(f) POLICY

See California Code of Regulations, title 22, section 87309 pertaining to storage space.

The licensee must ensure that any items available for the use of independently functioning individuals do not place other residents at risk. There is always the danger that residents can wander into other individual's rooms.

(g) and (g)(1) POLICY

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

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

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

(g) and (g)(1)

PROCEDURE (Continued)

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

(h)

PROCEDURE

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

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

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

Outdoor facility space that does not appear to be used for recreation and leisure might in fact be used by residents for this purpose. For example, facilities may have front porches or patios with benches, tables and chairs that may be used as areas where residents can talk, relax, play games or work on projects. If the area(s) is intended for resident use, the space must meet the requirements in California Code of Regulations, title 22, section 87705(h). Areas not intended for residents' use, or not actually used by residents, do not

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

need fencing. Outdoor facility space used for the residents' recreation and leisure may be allowed, even if it is not completely enclosed by a fence with self-closing latches and gates, or walls, provided that the licensee submits an exception request to Licensing with an alternative plan that sufficiently protects resident safety. Licensing must approve this plan.

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

(i) POLICY

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

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

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

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

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

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

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

PROCEDURE

In the unusual situation where a Durable Power of Attorney for Health Care gives the agent the authority to make other kinds of decisions, such as those concerning personal rights such as what the resident will wear (including wrist bands), the licensee may request an exception to California Code of Regulations, title 22, section 87705(i), which restricts this authority to the resident or the conservator. If such an exception is requested, the licensing program analyst must contact a staff attorney for assistance on each resident's particular case. A legal consult includes, but is not limited to, verification that the Durable Power of Attorney for Health Care meets all of the following conditions:

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

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

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

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

(j)

POLICY

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

PROCEDURE

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

It is not necessary to require auditory devices or staff alert features on doors or gates leading to “enclosed courtyards” or “secured yards” if there are safeguards in place to ensure resident safety. In this example, “enclosed courtyards” refers to areas without access to the greater outdoors. “Secured yards” refers to enclosed areas without gates or with locked gates. California Code of Regulations, title 22, section 87705(1) was written as a result of Health and Safety Code section 1569.698 (Building standards; adoption; locked and secured perimeters in residential care facilities; persons with dementia), whereby the term “secured perimeters” means “locked exterior doors” or “perimeter fence gates.” The licensee is still responsible for care and supervision when residents are outdoors in these “secured” areas. A resident could go into a secured outdoor area and be exposed to hot or cold weather, or wander into this area at night unnoticed.

California Code of Regulations, title 22, section 87705(b)(2) requires the plan of operation to address the needs of residents with dementia, including safety measures to

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

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

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

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

(k) POLICY

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

PROCEDURE

Facilities with delayed egress devices on exterior doors or perimeter fence gates may be permitted to install locks [with an approved waiver to California Code of Regulations,

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

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

(k)(2) PROCEDURE

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

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

(k)(5)-(6) POLICY

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

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

(k)(5)-(6)

PROCEDURE

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

(k)(7)

PROCEDURE

If residents who have been diagnosed by a physician to have dementia elope from a facility, licensees must report each incident to the Community Care Licensing Division and to the resident's conservator and/or other responsible person, if any, and to any family member who has requested notification. Reports to Emergency Services, such as 911 should also be made in the event of wandering or elopement events. Frequent reports might suggest the need for fundamental changes in the plan of operation, staff-to-resident ratios, or acceptance and retention criteria. The licensee may also consider the use of egress alert devices worn by the resident with the prior written approval of the resident or conservator, provided that such devices do not violate the resident's personal rights specified in California Code of Regulations, title 22, section 87468, Personal Rights. Auditory or other staff alert features can be used, including pressure sensitive mats. The use of a wander guard may be considered. California Code of Regulations, title 22, section 87705(j) requires the licensee to have an auditory device or other staff alert feature to monitor exits if exiting presents a hazard to any resident who is diagnosed by a physician to have dementia. See Regulation Interpretations and Procedures section 87705(j) pertaining to staff alert features to monitor exits if exiting presents a hazard to any resident.

(k)(8)

POLICY

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

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

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

(1)

POLICY

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

(1)(2)

PROCEDURE

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

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

(1)(4)

PROCEDURE

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

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

(1)(4)

PROCEDURE (Continued)

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

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

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

87705 CARE OF PERSONS WITH DEMENTIA (Continued)

87705

WHO CAN CONSENT FOR RESIDENTS DIAGNOSED WITH DEMENTIA WHO ARE RESIDING IN A RESIDENTIAL CARE FACILITY FOR THE ELDERLY?

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

87705 CARE OF PERSONS WITH DEMENTIA (Continued)**87705****(1)(4) PROCEDURE (Continued)*****Conditions include:**

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

(1)(5) POLICY

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

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

(1)(6) POLICY

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

ARTICLE 13. ENFORCEMENT**87755 INSPECTION AUTHORITY OF THE LICENSING AGENCY****87755****(a) POLICY**

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

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

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

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

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

PROCEDURE

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

87756 EVALUATION VISIT**87756****(a) POLICY**

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

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

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

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

PROCEDURE

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

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

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

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

87756 EVALUATION VISIT (Continued)**87756****(a) PROCEDURE (Continued)**

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

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

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

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

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

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

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

Deficiencies in Compliance**(b) POLICY**

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

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

87756 EVALUATION VISIT (Continued)**87756****(b) POLICY (Continued)**

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

PROCEDURE

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

(d) POLICY

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

PROCEDURE

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

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

Discuss the following during all exit interviews:

1. Deficiencies observed, noted and cited on the LIC 809 or the LIC 9099.
2. The plan for correcting any deficiencies, including due dates, and, if necessary, interim steps for completing each part of the plan.

87756 EVALUATION VISIT (Continued)**87756****(d) PROCEDURE (continued)**

3. The civil penalties process and the licensee's appeal rights. (See Regulation section 87455 and Reference Material Section 1-0040, Civil Penalties.)

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

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

See Reference Material sections 3-3100 through 3400.

(e)(1) POLICY

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

PROCEDURE

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

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

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

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

87756 EVALUATION VISIT (Continued)**87756**

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

POLICY

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

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

PROCEDURE

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

(e)(4)(B)

POLICY

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

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

87756 EVALUATION VISIT (Continued)**87756**

(e)(4)(B)

PROCEDURE

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

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

(e)(5)

POLICY

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

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

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

87758 SERIOUS DEFICIENCIES - EXAMPLES**87758**

(a)(1)

POLICY

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

(a)(2)

POLICY

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

87759 FOLLOW-UP VISITS TO DETERMINE COMPLIANCE 87759

See Reference Material section 1-0040, Enforcement.

87761 PENALTIES 87761

See Reference Material section 1-0040, Enforcement.

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

87763 APPEAL PROCESS 87763**(b) POLICY**

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

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

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

ARTICLE 14. ADMINISTRATIVE ACTIONS – GENERAL**ARTICLE 15. ADMINISTRATOR CERTIFICATION TRAINING PROGRAMS – VENDOR INFORMATION**