



# THE COMMUNITY CARE LICENSING DIVISION'S Quarterly Update

SPRING 2016

## ADULT/SENIOR CARE UPDATE

### *Adult and Senior Residential Licensing Program Mission:*

*The Adult and Senior Care Residential Licensing Program licenses and monitors Adult Day Programs, Adult Residential Facilities, Social Rehabilitation Facilities, Residential Care Facility for the Chronically Ill (RCFEI) and Residential Care Facilities for the Elderly (RCFE) in an effort to ensure that they provide a safe and healthy environment for all persons in care.*

### A note from Pamela Dickfoss, Deputy Director

Welcome to the Spring edition of the Community Care Licensing (CCL) Adult and Senior Care Quarterly Newsletter. As we strive for quality improvement in the division as well as in facilities, the CCL Adult and Senior Care Program is getting closer to releasing the RCFE medication resource guide. We appreciate the advice and feedback provided by our stakeholders, who as a collective spent hours with us in dialogue and discussion of many important aspects of the guide. We hope to release the final version soon.

Within the past few months, the Adult and Senior Care Program offices are gearing up for the increased inspection visits of facilities. As you know, current statutes allow the program the ability to conduct visits of licensed facilities as often as necessary to ensure the provision of quality of care. It is our objective that the increased visits will enhance communication, understanding, and overall quality of life. It is also our intent to identify compliance issues earlier and address them appropriately.

This month, another facility had to close due to compliance issues that adversely affected the lives of residents and substantially impacted

bed capacity in the region. For many years, this licensee accepted residents on Social Security with mental illness. It is our hope that through continued collaboration with stakeholders and increased contact by CCL staff with licensees, facilities will be well adapted to optimally serve their residents and maintain a quality of service that promotes dignity and well-being.

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## Management Changes

### **Leslie Mendiveles**

Leslie promoted to Licensing Program Manager (LPM) II in the Community Care Licensing Division's (CCLD) newly established Inland Empire Adult and Senior Care Regional Office, located in Riverside, effective January 1, 2016. She has served as an LPM I in the Southern California Adult and Senior Care Regional Office since May 2012, and prior to that she was a Licensing Program Analyst (LPA) in the Orange County/Inland Adult and Senior Care Regional Office, having started there in 1999. She has also served as an Individual Program Coordinator for the Department of Developmental Services from 1994 prior to joining CCLD in 1999. Leslie holds a Bachelor of Arts degree in Psychology from the University of California, Los Angeles that she received in 1993.

### **Antoinette Wood**

Antoinette promoted to an LPM I in the CCLD, Sacramento Adult and Senior Care Office effective March 16, 2016. Antoinette comes to us with a wealth of knowledge. She worked as an LPA in the Children's Residential Program for two years and three months before promoting to an Associate Governmental Program Analyst with the Technical Support Program (TSP) where she was for over a year. While working with TSP Antoinette was involved in assisting in developing guides to assist our licensees on different topics they have asked for. She has also worked with our stakeholders and assisted in scheduling the meetings with Program Office. Antoinette earned her Master Degree in Criminal Justice in 2009.

### **Jason Garay**

Jason promoted to LPM I in the CCLD, Southern California Adult and Senior Care Regional Office located in San Diego, effective January 11, 2016. He worked previously as an LPA with the CCLD Child Care Program, starting there in 2012. Prior to that, he worked as an Inspector for the Department of Motor Vehicles (DMV) from 2008 until joining CCLD in 2012. He has also held positions as a Licensing Registration Examiner and a Motor Vehicle Field Representative for DMV from 2001 to 2008. Mr. Garay holds an Associate of Arts degree in Liberal Arts from Allan Hancock and an Associate in Science in Human Services from Bakersfield College.

The updated listing of Adult and Senior Care Program Offices may be obtained on-line at: <http://cclcd.ca.gov/contact.htm>

## Statutory Reminders

The Adult and Senior Care Program is in the process of mailing a letter to all RCFE licensees advising them of new statutory requirements to provide a facility email address to CCLD. You should receive this letter with instructions and a PIN that will enable the licensee to upload the information through the Centralized Application Unit's email at: <http://www.cclld.ca.gov/PG4872.htm>. Letters should be received no later than March 31, 2016. If you do not receive your letter with your PIN by that date, contact the Centralized Application Unit at (916) 657-2600.

We again are reminding the RCFE licensees of new statutory requirements effective January 1, 2016. There is increased RCFE applicant and licensee disclosure of ownership information, prior record of regulatory compliance and current email address for all RCFE applicants. There are enhanced administrator certification requirements and direct care staff training for RCFEs. All residential facilities have a change in the civil penalty process and appeal procedures. Please view the implementation plans for all legislation that becomes effective January 1, 2016 at our website: <http://cclld.ca.gov/PG3063.htm>.

We want to advise all residential licensees that you are required to ensure your admission agreements comply with statutory and regulatory requirements. Coming soon will be a Self-Assessment Guide for Admission Agreements and a revised LIC604A form at <http://www.dss.cahwnet.gov/cdssweb/entres/forms/English/LIC604A.PDF> and LIC604 form <http://www.dss.cahwnet.gov/cdssweb/entres/forms/English/LIC604.pdf> that may be used for your facility admission agreements. These and other licensing forms can be found on the CCLD website under the "Forms" tab. Current regulations require any modifications or attachments to the original agreement be dated and signed by the client/resident, the responsible person or conservator and a copy maintained in the client/resident's file.

## Eviction Notices

Licensees are also reminded that when they issue an eviction notice to a resident they are required to inform the CCL regional office within five days of issuing the notice to the resident. The notice must include the following:

- 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. (This would be the date of termination, i.e., the expiration of the 30-day or 3-day period. It is recommended that licensees document the date the eviction notice is served and the end of the notice period.)
- 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 CDSS regarding the eviction, with the name, address, and telephone number of the nearest office of community care licensing and the State Ombudsman.
- A statement that informs the resident that the 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.

- A statement that if a licensee pursues an unlawful detainer action, the resident must be served with a summons and complaint.
- A statement that the resident has the right to contest the eviction in writing and through a hearing.

**Note:** SB 781 only applies to evictions specified in RCFE regulation section 87224. The process for an unlawful detainer action does not apply to health condition relocation orders, or transfer of a resident upon forfeiture of license or change in use of the facility.

## Regulation Reminder- Residential Care Facilities for the Chronically III

Due to the resident's compromised immune systems, it is important to change bedding regularly and ensure that no resident shares hand or bath towels. Regulation section [87888](#) (i) requires clean linen in good repair, including lightweight, warm blankets and bedspreads; top and bottom bed sheets; pillow cases; mattress pads; and bath towels, hand towels and washcloths. Bed linens shall be changed

at least every four days or more frequently if needed. The quantity of bed linens shall be minimally three sets per bed to allow for frequent changes, all beds shall have mattress covers and all bed pillows shall be washable and protected with covers.

## Medications from Other Countries

The Federal Drug Administration (FDA) stated concern in their [letter](#) to the California Deputy District Attorney regarding the safety risks associated with the importation of prescription drugs from foreign countries. "In our experience, many drugs obtained from foreign sources that purport and appear to be the same as U.S. – approved prescription drugs have been of unknown quality. We cannot provide adequate assurance to the American public that the drug products delivered to consumers in the United States from foreign countries are the same products approved by FDA." The letter goes on to describe under what circumstances drugs can be imported into

this country legally. If you have a resident using medication from another country, you can ensure that it meets all legal requirements by reading the Opinion letter (located at <http://www.fda.gov/drugs/drugsafety/ucm179893.htm>) or by reviewing the Personal Importation Policy Frequently Asked Questions available at: <http://www.fda.gov/downloads/drugs/guidancecomplianceregulatoryinformation/importsandexportscompliance/ucm297909.pdf>) Additional information is available at: <http://www.fda.gov/Drugs/ResourcesForYou/Consumers/BuyingUsingMedicineSafely/BuyingMedicinefromOutsidetheUnitedStates/default.htm>

## Activities to Stimulate Your Residents

Keeping residents active can lessen agitation and aggression. Try to focus on what they can do rather than what they cannot do. Residents often feel a loss of control which feeds into this dynamic. One solution is to find activities that are self-empowering and self-validating. Games or activities that have a “win-win” outcome are a wonderful means to this goal. Activities do not need to be structured or complicated. In fact some of the best ways of helping residents to remain active is to keep them involved in the day-to-day tasks in and around the facility. Make activities meaningful to the resident. Ask what interests or jobs they had in the past. Job tasks can help with self-esteem such as folding clothes, sorting mail,

caring for the “baby” or taking care of pets can make the resident feel useful. Self-care tasks such as shopping, handling money, fixing food, cleaning rooms helps to keep the resident independent. Social activities like reminiscing, singing, playing cards, games, puzzles and crafts brings pleasure to the residents and keeps them in touch with others. Assess the abilities of each resident and keep the activities simple. If the activity is too complicated it may frustrate the resident. Give the resident both verbal and visual instructions. Talk about the activity as you complete each task. Ask the resident “do you remember when...” as it relates to what you are working on. If there is something your residents particularly enjoy, make it a routine, but don’t be afraid to try something new.

## Health Insurance Portability and Accountability (HIPAA)

The Health Insurance Portability and Accountability Act (HIPAA) was passed by Congress in 1996 and does the following:

- Requires the protection and confidential handling of protected health information
- Provides the ability to transfer and continue health insurance coverage for millions of American workers and their families when they change or lose their jobs
- Reduces health care fraud and abuse
- Mandates industry-wide standards for health care information on electronic billing and other processes.

The HIPAA Privacy regulations require health care providers and organizations, as well as their business associates, develop and follow procedures that ensure the confidentiality and security of protected health information (PHI) when it is transferred, received, handled, or shared. This applies to all forms of PHI, including paper, oral, and electronic, etc. Only

the minimum health information necessary to conduct business is to be used or shared.

A major goal of the Privacy Rule is to assure that individuals’ health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care and to protect the public’s health and well-being. The Rule strikes a balance that permits important uses of information, while protecting the privacy of people who seek care and healing. Given that the health care marketplace is diverse, the Rule is designed to be flexible and comprehensive to cover the variety of uses and disclosures that need to be addressed.

The Privacy Rule applies to health plans, health care clearinghouses, and to any health care provider who transmits health information in electronic form in connection with transactions for which the Secretary of Health & Human Services has adopted standards

under HIPAA (the “covered entities”). RCFEs and ARFs are not healthcare providers, however they advocate for their residents and assists to obtain healthcare for their residents, therefore, they should be aware of the requirements of HIPAA.

**Required Disclosures** - A covered entity must disclose protected health information in only two situations: (a) to individuals (or their personal representatives) specifically when they request access to, or an accounting of disclosures of, their protected health information; and (b) to Department of Health &

Human Services (Community Care Licensing is a Division under HHS) when it is undertaking a compliance investigation or review or enforcement action. See additional guidance on [Government Access](#).

The DHCS has a Privacy Office that oversees compliance on all state and federal privacy laws, including HIPAA [Center for Medicare and Medicaid Services](#). If you have questions regarding HIPAA, you can contact the Department of Health Care Services at [HIPAAteam@dhcs.ca.gov](mailto:HIPAAteam@dhcs.ca.gov)

## Plain English on Medication Labels for Residents

Famous author Mark Twain wrote, in 1864, that doctors should “*discard abbreviations... to avoid the possibility of mistakes.*” We agree! A prescription for medicine should not be a mystery to understand, but more than 500,000 Americans misinterpret them every year.

Most patients rely on the information printed directly on their medication containers, which is why having an easy-to-read label and warnings is so important. Licensees have a responsibility to clearly understand the directions as well, especially assisting residents with self-administration of medications.

Health and Safety Code section 1569.69(a)(6) requires RCFE licensees to “to encourage pharmacists and licensed medical professionals to use plain English when preparing labels on medications supplied to residents. For this section plain English means no abbreviations, symbols, or Latin medical terms shall be used in the instructions for self-administration of medication.”

The simplest way to encourage pharmacists to use plain English is to ask for it! If the medication labels include abbreviations, symbols or Latin terms, or the instructions are not clear in any other ways, ask them to prepare a new prescription label.

The California Code of Regulations (CCR) [section 87465\(e\)](#) requires licensees assisting residents with the self-administration of prescription and non-prescription medication to have at least all of the following information contained on the physician order or medication label:

- (1) The specific symptoms which include the need for the use of the medication.
- (2) The exact dosage.
- (3) The minimum number of hours between doses.
- (4) The maximum number of doses allowed in each 24-hour period.

It is of paramount importance for the licensee to understand and follow the written medication directions. A licensee could be cited for having medication instructions on file that are not written in plain English, as previously defined. Similarly, a licensee may be held responsible if a resident is harmed by taking medication incorrectly due to lack of understanding medication directions.

Some directions worth asking the resident’s doctor or pharmacist about:

**Take once (or twice) daily:** Ask the doctor or pharmacist precisely when the medication should be taken. Does twice daily, for example, have to be 12 hours apart, or is swallowing the

pill sometime during the morning and evening okay?

**Take with food:** A full meal is not usually necessary unless the label specifies to take the medication at breakfast or dinner. You can eat a container of yogurt or another decent-sized snack to protect against stomach irritation.

**Take with water:** It is crucial to take some medications with lots of water. At least eight ounces of water are needed to wash down the pill and avoid any esophageal irritation.

**Limit sun exposure:** Some medications can react to sunlight, increasing the risk of severe sunburn. Check with the doctor or pharmacist, but typical sun precautions should be fine — limiting exposure and wearing protective clothing and sunscreen.

**Avoid alcohol:** Sipping a glass of wine or having a drink while taking some medications can cause side effects such as drowsiness, increasing the risk of accidents or falls. Ask the doctor or pharmacist how much and when you can drink if the label says avoid alcohol.

## U. S. Department of Labor assists employers to operate in compliance

Caregivers working in residential care facilities perform many different tasks including cooking meals, dressing clients, changing diapers, and comforting clients who have awoken in the night confused and frightened. While the work can be rewarding, many of these employees work long hours and may fail to receive the minimum wage and overtime required under the Fair Labor Standards Act.

The Fair Labor Standards Act requires that covered employees be paid at least the minimum wage, as well as [overtime](#), of time and one half their regular rate for all [hours worked](#) over 40 in a week. Aside from directly caring for clients, the term “hours worked” includes time spent on household chores, monitoring clients as they watch TV, driving clients to doctors’ appointments, getting up at night to assist a client and attending required trainings and staff meetings. All of this time must be captured in the employer’s [time records](#). Sometimes these employees receive a flat monthly salary that does not take into account all hours worked. Paying caregivers and administrators a salary instead of hourly is one of the most common causes of large back wage liabilities. Facility operators may also fail to combine all hours worked at multiple facilities and fail to pay overtime based on the

total hours worked. This happens when operators mistakenly believe they do not have to combine hours between locations because the facilities are separately incorporated.

Another common misconception in the industry is misclassifying care givers as [independent contractors](#). True independent contractors are workers with economic independence who are in business for themselves, and typically do not perform the same duties as regular “employees”. Although we are seeing a shift in the industry regarding this practice, it is still something the department sees today. The Department of Labor is committed to investigating employers who may benefit from the perceived “savings” of employee misclassification and labor violations.

Fortunately, facility owners are switching to paying hourly, properly recording the hours caregivers work, and paying overtime. How can you be part of this change and not be left behind? Just call our toll-free helpline at 1-866-4USWAGE (1-866-487-9243) for assistance, at no cost to you, or e-mail us at [CareFacilityInfo@dol.gov](mailto:CareFacilityInfo@dol.gov) to sign-up for notifications about upcoming trainings and more information on the law- [we are here to help!](#)

## Mandated Reporter

Elder abuse occurs when someone over the age of 65 is abused physically, emotionally, or financially or neglected. This can be staff writing checks from a residents account, or staff at a facility neglects to properly care for a resident resulting in bedsores, or a staff physically or emotionally abuses a resident.

The DOJ is currently offering [training guides and videos](#) on their website. The DOJ also offers a "[Mandated Reporter Flow Chart](#)" to assist people in understanding what their duties as a mandated reporter are. Remember, not knowing your responsibility to report is not an excuse. You can still be held criminally and civilly liable.

IMPORTANT PHONE NUMBERS		Notes and Credits
Centralized Complaint Information Bureau (CCIB)	1-844-538-8766	<p>The Community Care Licensing Division (CCLD) publishes the Adult and Elderly Residential Care Quarterly Update for the benefit of Licensees, Residents, their Advocates, and other Stakeholders.</p> <p><b>Pamela Dickfoss, CCLD Deputy Director</b> <b>Ley Arquisola, Adult and Elderly Residential Care Program Administrator</b></p> <p><i><u>This Issue's Editor</u></i> <i>Alison Newkirk</i></p> <p><i><u>Assistant Editor</u></i> <i>Alison Harris and Stephen Kim</i></p> <p><i><u>Other Contributors</u></i> <i>Katie Hernandez-CCL, Jamika Lopez-DOL</i></p>
Administrator Certification	916-653-9300	
Caregiver Background Check Bureau (CBCB)	1-888-422-5669	
Long Term Care Ombudsman	1-800-231-4024	
CCL Public Inquiry and Response	916-651-8848	
Technical Support Program	916-654-1541	