

EVALUATOR MANUAL TRANSMITTAL SHEET

<p><u>Distribution:</u></p> <p><input type="checkbox"/> All Child Care Evaluator Manual Holders</p> <p><input type="checkbox"/> All Residential Care Evaluator Manual Holders</p> <p><input checked="" type="checkbox"/> All Evaluator Manual Holders</p>	<p><u>Transmittal No.</u> 10APX-04</p> <hr/> <p><u>Date Issued</u> February 2010</p>
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Subject:

2009 Chaptered Legislation
Appendix A - Residential Care Facilities for the Elderly

Reason for Change:

This document transmits summaries of legislation chaptered in 2009 affecting Residential Care Facilities for the Elderly. The summaries are divided into two sections as follows:

1. Immediate Action Required - Interim instructions are provided.
2. Information Only - No action required by the Community Care Licensing Division

An index is attached to assist staff in locating specific bills. Statutes referenced in this document became operative on January 1, 2010.

Filing Instructions:

INSERT – 2009 Chaptered Legislation. Do not remove similar documents from the previous years.

Approved:

*Original Document Signed by
Seton Bunker for Thomas Stahl*

2/5/10

THOMAS STAHL Chief
Policy Development Bureau
Community Care Licensing Division

Date

Contact Person: Thomas Stahl

Phone Number: (916) 324-4312

SUMMARY AND IMPLEMENTATION PLANS 2009 CHAPTERED LEGISLATION

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INFORMATION ONLY – NO ACTION REQUIRED

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Unless otherwise noted, all new legislation becomes effective on January 1, 2010. When conducting licensing visits, LPAs should, to the extent practical, make sure that providers are aware of any new requirements. However, regardless of whether this information is provided, it is the licensee's responsibility to be aware of any new requirements affecting their program.

ACTION REQUIRED

AB 762 (Lowenthal), CHAPTER 417, STATUTES OF 2009

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

Subject: Community Care Facilities, CCFs, RCF-CIs and RCFEs - Bedridden
Persons

Summary: Assembly Bill (AB) 762, Lowenthal, effective January 1, 2010; amends sections 1566.45, 1568.0832 and 1569.72 of the Health and Safety Code for purposes of fire clearances. For purposes of fire clearances, AB 762 changes the law so that RCFE, CCF and RCF-CI residents/clients who need assistance in transferring to and from bed (but who **do not need assistance** in turning or repositioning in bed), shall be considered nonambulatory. Bedridden, for purposes of fire clearances, means persons who **do need assistance** to turn or reposition in bed.

Implementation: The LIC 200 Application for Community Care Facility or Residential Care Facility for the Elderly is currently being revised to reflect the changes of this new law. Until the LIC 200 is updated, this implementation plan and Evaluator Manual, Reference Material, Office Functions, sections 2-1115 and 2-1116 are to be used to enforce this new law.

Resources

For a copy of the LIC 200, Application for Community Care Facility or Residential Care Facility for the Elderly, see:

<http://www.dss.cahwnet.gov/cdssweb/entres/forms/English/LIC200.pdf>

For legislative information related to this new law, see:

http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0751-0800/ab_762_bill_20091011_chaptered.pdf

ACTION REQUIRED

SB 781 (Leno), CHAPTER 617, STATUTES OF 2009

Affects: Residential Care Facilities for the Elderly (RCFEs)

Subject: Eviction Procedures

Summary: Senate Bill (SB) 781, which is effective January 1, 2010, adds section 1569.683 to the Health and Safety Code (H&SC). This law requires licensees of a residential care facility for the elderly (RCFE) to include specified information in the notice to quit (eviction notice) that is given to residents prior to their eviction. The purpose of this law is to provide consumer awareness and to ensure that eviction notices do not violate residents' rights.

Requirements to be Included in an Eviction Notice – Pursuant to SB 781

In addition to meeting the requirements in SB 781, the licensee must comply with other applicable RCFE regulations, including section 87224 on eviction procedures.

The eviction notice must include the following information as required in SB 781:

- 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 the 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.

Implementation:

- The LPA must review all new facility applications as of January 1, 2010 to ensure that eviction notices meet the requirements of H&SC section 1569.683 (SB 781). The LPA must also ensure that the admission agreement contains the required information.
- During a desk review, upon receipt of a facility's eviction notice, or prior to a facility visit:
 - The LPA must review the facility file to see if the licensee has submitted an updated 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 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 facility evicts residents as required in H&SC section 1569.682. Most of the information required by SB 781 to be included in the eviction notice has already been required by existing statute and regulations.
 - The LPA must review the facility's eviction notice to see if it meets the new statutory requirements in H&SC section 1569.683. If the notice is not compliant with statute, the LPA must phone the licensee immediately. The LPA shall advise the licensee that he/she must immediately notify the resident and/or the resident's responsible person or conservator that the timeframe for the 30-day or 3-day eviction process will not begin until the resident is served with a CCLD approved corrected eviction notice. Further, the LPA must inform the licensee that he/she must continue to provide care and supervision to that resident, and continue to meet the needs of that resident, for as long as that resident resides in the facility. (For purposes of this law, served to the resident means the documented date the resident was given the notice. Served to the conservator or family means the documented date the notice was mailed, faxed, etc.)
 - ❖ The LPA must follow up this phone call by sending the licensee a form letter or checklist of required items for the eviction notice [see Evaluator Manual

Regulation Interpretations and Procedures for Residential Care Facilities for the Elderly section 87224(a)].

- ❖ The licensee shall notify and provide a copy of the corrected eviction notice to the resident's responsible person or conservator upon serving the corrected eviction notice to the resident.
- ❖ The LPA must document all activities related to this event on the form, LIC 812, Detail Supportive Information, and place this form in the confidential section of the facility file.
- During the next facility visit or complaint visit to an RCFE, LPAs must notify administrators about the new requirements of H&SC section 1569.683.
 - The LPA must discuss and provide a copy of this implementation plan or provide information on how to access this implementation plan on the CCLD website.
- The LPA may offer consultant services on best practices in the following areas:
 - It is a best practice for a licensee to issue the eviction notice in writing to the resident and resident's responsible person or conservator at preferably the same time.
 - It is a best practice, if an Ombudsman is to be notified of the eviction, for a licensee to share the eviction notice with both the local Ombudsman's office as well as the State Ombudsman's office, which will eliminate delays in routing the actual eviction notice from the state office to the local office.
 - The resource "list" provided to residents must identify, at a minimum, other local providers, Ombudsman, referral agencies and placement/case management services. It is a best practice for a licensee to work with other licensees, their LPA, city and county resources, State and local Ombudsman, clergy, referral agencies, case management agencies, multipurpose senior service programs, family members and social workers to comply with the requirement to include resources in the eviction notice. This list should be current at all times.
- As appropriate, until regulations are developed, the LPA must use H&SC section 1569.683 as the authority for citing the facility for any violation that pertains to the contents of the eviction notice.

Complaint Investigations and 3-Day Eviction Notices

- For an unlawful eviction complaint, the LPA must initiate the investigation as soon as possible to avoid a potentially unnecessary relocation of a resident.

- If a resident receives a 3-day eviction notice based on good cause, and if that resident does not leave a facility within that timeframe, then H&SC section 1569.683 still applies and the licensee must file an unlawful detainer action in superior court.
- During this interim period, licensees may rely upon other resources or means of intervention to ensure the health and safety of all residents is protected.
 - 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/herself or to the mental and/or physical health or safety of others in the facility. The issuance of the 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. The burden of proof falls on the licensee to demonstrate that a resident is not safe. All 3-day eviction notices are reviewed on a case-by-case basis to determine if good cause exists.

Court Proceeding

- If an LPA is required to appear in court, an LPM and legal liaison must be consulted prior to the proceeding.

Resources

For legislative information related to this new law, see:
http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0751-0800/sb_781_bill_20091011_chaptered.html

INFORMATION ONLY - NO ACTION REQUIRED

AB 123 (Portantino), CHAPTER 82, STATUTES OF 2009

Affects: Community Care Facilities (CCFs); Residential Care Facilities for the Chronically Ill (RCF-CIs); and Residential Care Facilities for the Elderly (RCFEs)

Subject: Housing for Elderly or Disabled Persons

Summary: This law amends Health and Safety Code sections 1505, 1568.03, and 1569.145. This new law expands the list of federal housing subsidy programs that are exempt from licensure by the Community Care Licensing Division (CCLD). This bill includes housing that qualifies for a low-income housing tax credit or that is subject to the requirements for rental dwellings for low-income families, and that is occupied by elderly and/or disabled persons, where supportive services are made available to residents at their option, as long as the project owner or operator does not contract for or provide the supportive services. Health and Safety Code already stipulates that a project owner or operator may coordinate, or help residents gain access to, the supportive services, either directly, or through a service coordinator. CCLD has laws in place to allow investigation of any facilities that are believed to be providing care and supervision and are not licensed. None of the housing options exempt from licensure would be in conflict with current licensing standards or practices. By expanding the current exemption to include two other types of affordable housing, it will help to ensure that a greater number of seniors are able to age in place.

AB 176 (Silva), CHAPTER 88, STATUTES OF 2009

Affects: Residential Care Facilities for the Elderly (RCFEs)

Subject: Maintenance of the Codes

Summary: This new law makes technical changes to California Codes that the California Law Revision Commission recommended, including changes to Health and Safety Code section 1569.69. The California Law Revision Commission is authorized to recommend changes in the law to modify or eliminate antiquated and inequitable rules of law and bring the law into harmony with modern conditions. Non-substantial changes were made to Health and Safety Code section 1569.69, which regulates staff in residential care facilities for the elderly that assist residents with the self-administration of medication. This Code made the following changes: the word "exam" was changed to "examination"; a typo was corrected; some grammatical changes were made; "video instruction tapes" was changed to "video recorded instruction"; and an obsolete effective date was deleted.

INFORMATION ONLY - NO ACTION REQUIRED

AB 407 (Ruskin), CHAPTER 442, STATUTES OF 2009

Affects: Continuing Care Retirement Communities

Subject: Continuing Care Contracts: Retirement Communities; Closure

Summary: This legislation defines “permanent closure” for purposes of a Continuing Care Retirement Community (CCRC) and outlines the notification requirements, timeframes, and processes for closing a CCRC or a portion thereof. It requires providers to include this information in continuing care contracts. The legislation requires providers to fund a reserve, set up a trust fund, or secure a performance bond to ensure the fulfillment of the obligations and commitments for all costs associated with the closure and relocation plan.

IMPLEMENTATION:

The Continuing Care Contracts Branch will notify CCRC providers that their continuing care contracts must be modified to comply with this legislation. CCRC providers must submit the amended contract forms to the Continuing Care Contracts Branch for review and approval before they can be offered to residents.

AB 1169 (Beall), CHAPTER 513, STATUTES OF 2009

Affects: Continuing Care Retirement Communities

Subject: Financial Reserve Requirements

Summary: This legislation expands the scope of the disclosures that Continuing Care Retirement Communities (CCRC) must make in the annual report they file with the Continuing Care Contracts Branch regarding their financial reserves. It requires all continuing care providers to disclose the amounts they have accumulated or expended for projects and amounts maintained for contingencies. Non-profit providers are specifically required to add to their current reserve disclosures a description of any amounts accumulated or expended for projects intended to meet the needs of the community within the providers’ tax exempt purpose. Non-profit providers are also required to disclose how those projects are consistent with the provider’s tax exempt status.

IMPLEMENTATION:

The Continuing Care Contracts Branch will notify CCRC providers of the new reporting requirements they must submit with their annual audited financial statement and reserve reports.