

# Outline of Residents' Rights, Residential Care Facilities for the Elderly

## I. Admission Rights

### Admission Process

- A facility must not discriminate against a person seeking admission or a resident based on sex, race, color, religion, national origin, marital status, registered domestic partner status, ancestry, actual or perceived sexual orientation, or actual or perceived gender identity. (HSC 1569.269(b))
- The admission agreement, its attachments, and any other document that a resident or representative is required to sign as a condition of admission must not require the resident to waive benefits or rights to which the resident is entitled under federal or state law or regulation. (HSC 1569.269(c))
- At admission, the facility must advise a resident and resident's representative of the resident's rights established by California laws and regulations, give them a complete written copy of the rights, have each resident and representative sign and date a copy of the resident's rights, and include the signed and dated copy in the resident's record. (HSC 1569.267(a))
- Prior to or at admission, residents have the right to be fully informed of all rules governing their conduct and responsibilities, as evidenced by the resident's written acknowledgement. (HSC 1569.269(a)(13))
- Prior to or at admission, residents have the right to be informed in writing of any resident retention limitations by the state or facility, including any limitations or restrictions on the facility's ability to meet residents' needs. (HSC 1569.269(a)(15))

### Admission Agreements (Contracts)

- All basic services provided under a single fee must be listed in the agreement. (HSC 1569.884(a); CCR 87507(g)(3)(A))
- All optional services and their costs must be listed in the agreement. (HSC 1569.884(b); CCR 87507(g)(3)(B))
- The agreement must include a comprehensive description of the method for evaluating residents' service needs and the fee schedule for the items and services provided. (HSC 1569.269(a)(14); CCR 87468.2(a)(12))
- Conditions for rate increases pursuant to 1569.655 must be included in the agreement. (HSC 1569.884(f), 1569.655; CCR 87507(g)(4))
- The agreement must include an explanation of third party services related to the resident's service plan and how they may be arranged. (HSC 1569.884(d))
- The agreement must include a copy of the residents' rights. (HSC 1569.885(d))
- There must be an explanation in the agreement of the availability of special telecommunications devices for the deaf or hard of hearing or for persons with other disabilities. (HSC 1569.159; CCR 87507(b))
- The agreement must include the facility's visiting policy. (HSC 1569.884(g), 1569.313; CCR

87468.1(a)(10), 87507(g)(7))

- Conditions under which the agreement may be terminated must be stated. (HSC 1569.884(i); CCR 87507(g)(10), (11))
- Residents or resident representatives shall receive a copy of the signed and dated agreement. (HSC 1569.887(c))

### **Rates and Payment**

- The provisions for payment, e.g., payer, due date, etc., must be stated in the agreement. (HSC 1569.884(e); CCR 87507(g)(3))
- The facility must provide a 60 day written notice for rate increases and increases in any rate structures for services as stated in the admission agreement. (HSC 1569.655(a))
- The agreement must include the SSI rate and payment provisions for any resident receiving SSI/SSP. (CCR 87507(g)(4), 87464(e))
- The facility cannot charge any form of pre-admission fee to SSI/SSP recipients. (HSC 1569.651(a); CCR 87507(g)(3)(C)(3))
- The facility cannot charge any nonrecurring lump-sum fees. (HSC 1569.655(b))
- A facility may assess a separate charge for an item or service only if it is included in the admission agreement. (HSC 1569.651(d), 1569.884(c))

### **Financial Pre-Conditions**

- The agreement cannot require disclosure of fund sources for fee payment. (CCR 87507(g)(3)(F))
- The agreement shall not include unlawful waivers of facility liability for the health and safety or personal property of residents. (HSC 1569.883(a); CCR 87507(h)(2))

### **Security Deposits/Refunds**

- Facilities are not allowed to charge security or damage deposits. (HSC 1569.651(c))
- The facility must make a refund of previously paid monthly fees when the licensing agency orders a relocation of a resident. (CCR 87507(g)(5)(B))
- Facilities cannot charge beyond the date of a resident's death once all personal property belonging to the deceased resident has been removed from the living unit. (HSC §1569.652(a))
- A refund of any fees paid in advance covering the time after the resident's personal property has been removed from the facility shall be issued within 15 days after the personal property is removed. (HSC §1569.652(c))
- If fees are assessed while a resident's personal property remains in a unit after the resident is deceased, a licensee shall, within three days of becoming aware of the resident's death, provide to the resident's responsible person, or other individual or individuals as identified in the admission agreement or attachment, written notice of the facility's policies regarding contract termination upon death and refunds. (HSC §1569.652(d))

## II. Transfer & Discharge Rights

### Eviction Criteria

Residents cannot be evicted unless at least one of the following five conditions are met:

- Nonpayment within 10 days of the due date. (CCR 87224(a)(1))
- Failure of the resident to comply with state or local law after receiving written notice of the alleged violation. (CCR 87224(a)(2))
- Failure of the resident to comply with general policies of the facility (the policies must be for the purpose of making it possible for residents to live together, and must be in writing and included in the admission agreement). (CCR 87224(a)(3))
- It is determined that the resident has a previously unidentified need and a reappraisal has been conducted, and the facility believes it is no longer appropriate for the resident. (CCR 87224(a)(4))
- Change of use of the facility. (CCR 87224(a)(5))

### Licensing's Authority to Relocate

- The licensing agency has the authority to relocate residents for "prohibited health conditions" if it provides written notice to the resident and the licensee. (HSC 1569.54(b); CCR 87637)
- If the resident poses an immediate danger to self, the licensing agency may relocate the resident, after contacting a physician about the transfer. (HSC 1569.54(a)(2))
- The licensing agency can close a facility under a temporary suspension order, and all residents can be relocated. (HSC 1569.50; CCR 87775(c), 87223)

### SSI Residents and Evictions

- Private paying residents of RCFEs cannot be evicted if they later qualify for Supplemental Security Income (SSI). (CCR 87464(e))
- If the resident is an SSI/SSP recipient, then the basic services shall be provided and/or made available at the basic rate at no additional charge to the resident. (CCR 87464(e))
- See also CANHR's fact sheets on SSI and RCFEs: **Supplemental Security Income (SSI) in Residential Care Facilities** and **RCFEs & SSI: Fact or Fiction?**

### Transfer and Discharge Protections

- Facilities must not involuntarily transfer or evict residents for grounds other than those set forth in state laws and regulations, and must comply with enumerated eviction and relocation protections for residents. (HSC 1569.269(a)(22))
- Eviction policies and procedures must be stated in the admission agreement. (HSC 1569.886(c); CCR 87507(g)(10))
- The admission agreement cannot modify or add to any of the five legal reasons for eviction. (HSC 1569.886(b); CCR 87507(g)(10))
- See also CANHR's fact sheet on Eviction Protections.

## **Preparation Prior to Transfer or Eviction**

- For licensing ordered relocation, the facility must prepare a written relocation plan to reduce the resident's stress and potential for transfer trauma. (HSC 1569.54(b)(2); CCR 87637(b)(2))

## **Eviction Notices**

- The facility is required to give a 30-day written notice to evict. (CCR 87224(a))
- When the resident is exhibiting behavior threatening to him/herself or others, the licensing agency can permit a 3-day notice of eviction. (CCR 87224(b))
- The notice must be sent to the resident and his/her agent or legal representative, stating the reason(s) for the eviction. (CCR 87224(c)&(d))
- *An eviction notice must contain the following:*
  - The effective date of the eviction. (HSC 1569.683(a)(1))
  - Resources available to assist in identifying alternative housing and care options, including public and private referral services and case management organizations. (HSC 1569.683(a)(2))
  - 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. (HSC 1569.683(a)(3))
  - The following statement: "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." (HSC 1569.683(a)(4))

## **Appealing Proposed Transfer or Eviction**

- The resident and resident's representative have the right to file a complaint with licensing about the eviction process or reasons for eviction. (See HSC 1569.35; CCR 87224(e))
- 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, the resident must be served with a summons and complaint. The resident has the right to contest the eviction in writing and through a hearing. (HSC 1569.683(a)(4))
- The resident or resident's representative can request an independent review by an interdisciplinary team of the licensing agency's relocation order. (HSC 1569.54(b); CCR 87638)

## **III. RCFE Closures**

The RCFE Relocation Protection Act of 2008 and subsequent legislation established relocation rights and procedures for residents who are being evicted due to the closure of a facility. In this situation, a facility must take all reasonable steps to transfer affected residents safely and shall:

1. Prepare a relocation evaluation for each resident. (HSC 1569.682(a)(1))
2. Provide written notice to the resident or resident's representative at least 60 days before the intended eviction. (HSC 1569.682(a)(2))
3. Discuss the relocation evaluation with the resident and his or her legal representative within 30 days of issuing the notice of eviction. (HSC 1569.682(a)(3))
4. Submit a closure plan to Community Care Licensing for approval if seven or more residents will be transferred. The facility shall not issue a notice of transfer until licensing approves its closure plan. (HSC 1569.682(b))
5. Refund prepaid monthly fees on a proportional per diem basis. If the resident gives five days notice before leaving the facility, the refund must be paid at the time the resident leaves the facility, or otherwise within seven days from the date that the resident leaves the facility and the unit is vacated. (HSC 1569.682(a)(7))
6. Refund of pre-admission fees in excess of \$500: a refund of 100% if paid within 6 months before the notice of eviction; 75% if paid more than 6 months but not more than 12 months; 50% if paid more than 12 months but not more than 18 months; and 25% if paid more than 18 months but not more than 24 months. (Note: No pre-admission fee refund is required, but is permissible, if paid 25 months or more before the notice of eviction.) (HSC 1569.682(a)(6))

See CANHR's [Fact Sheet on RCFE Closures](#) for more information about these rights.

## IV. Rights within Facility

### Notice & Exercise of Rights

- Residents have the right to be encouraged and assisted in exercising their rights, and to be free from interference, coercion, discrimination, and retaliation. (HSC 1569.269(a)(4); 22 CCR 87468.2(a)(3))
- The facility must provide initial and ongoing training to all staff members to ensure that residents' rights are fully respected and implemented. (HSC 1569.267(d))
- The admission agreement must include a copy of residents' rights. (HSC 1569.885(d); 22 CCR 87468(b))
- The facility must prominently post a copy of the residents' rights in areas accessible to residents and their representatives. (HSC 1569.267(b); CCR 87468(c))
- The facility must post copies of resident rights in English, and in any other language in which 5% or more of the residents in the facility can only read that language. (HSC 1569.267(c); CCR 87468(d))

### Basic Needs & Daily Life

Residents have the right to the following:

- Care, supervision, and services that meet their individual needs and are delivered by staff sufficient in numbers, qualifications, and competency to meet their needs. (HSC 1569.269(a)(6); CCR 87468.2(a)(4))
- Reasonable accommodation of individual needs and preferences in all aspects of life in the facility. (HSC 1569.269(a)(16); CCR 87468.2(a)(14))
- Make choices concerning their daily life in the facility. (HSC 1569.269(a)(8); CCR 87468.2(a)(6))

- Dignity in all relationships. (HSC 1569.269(a)(1)); CCR 87468.1(a)(1))
- Safe, healthful, and comfortable accommodations, furnishings, equipment, and environment. (HSC 1569.269(a)(5); CCR 87468.1(a)(2))
- Freedom from corporal or unusual punishment, neglect, financial exploitation, involuntary seclusion, humiliation, intimidation, physical abuse, sexual abuse, verbal abuse, mental abuse or other punitive actions. (HSC 1569.269(a)(10); CCR 87468.1(a)(3))
- Food of the quality and quantity necessary to meet their nutritional needs. (HSC 1569.269(a)(7); CCR 87468.2(a)(5))
- Keep, have access to, and use their own personal items, including money, clothes, and toiletries. (HSC 1569.269(a)(30); CCR 87468.1(a)(12))
- Encouragement to maintain and develop their fullest potential for independent living through participation in activities that are designed for this purpose. (HSC 1569.269(a)(26); CCR 87468.2(a)(23))

### **Rooms & Roommates**

Residents have the right to the following:

- Reasonable accommodation preferences regarding room and roommate choices. (HSC 1569.269(a)(17); CCR 87468.2(a)(15))
- Share a room with the resident's spouse, domestic partner, or person of resident's choice when the residents live in the same facility and consent to the arrangement. (HSC 1569.269(a)(19); CCR 87468.2(a)(17))
- Written notice of any room changes at least 30 days in advance, unless the request is agreed to by the resident, required to fill a vacant bed, or an emergency. (HSC 1569.269(a)(18); CCR 87468.2(a)(16))

### **Health Care Decisions**

- Residents have the right to fully participate in planning their care, including the right to attend meetings regarding care and services, involving persons of their choice in the planning process, and receiving necessary information to make informed decisions and choices. (HSC 1569.269(a)(9); CCR 87468.2(a)(7))
- Residents have the right to select their own physicians, pharmacies, privately paid personal assistants, hospice agency, and health care providers. (HSC 1569.269(a)(20); CCR 87468.2(a)(18))
- The facility cannot require the purchase of medications or medical equipment from a particular source. (HSC 1569.314)
- Residents have the right to complete advance health care directives, and to receive written information on their right to prepare directives and the facilities' policies on honoring directives. (HSC 1569.156, 1569.269(a)(25); CCR 87468.2(a)(22))
- Residents have the right to receive or reject medical care or other services. (CCR 87468.1(a)(16))
- Family or legal representatives must be regularly informed of care and service activities and ongoing evaluations. (CCR 87468.1(a)(8))

## Autonomy

- Residents have the right to organize and participate in a resident council. (HSC 1569.269(a)(27), 1569.157; CCR 87468.2(a)(24))
- Residents' family members, friends, and representatives have the right to organize and participate in a family council. (HSC 1569.269(d), 1569.158; CCR 87468.2(d))
- Residents can attend religious services or activities of choice. (CCR 87468.1(a)(5))
- Residents can leave and depart facility freely and not be locked into a room. (CCR 87468.1(a)(6))
- Residents have the right to receive assistance in exercising right to vote. (CCR 87468.1(a)(17))
- Residents have the right to move from the facility. (HSC 1569.269(a)(23), CCR 87468.1(a)(18))

## Privacy/Confidentiality/Access

- Residents have the right to a reasonable level of personal privacy in accommodations, medical treatment, visits, communications, telephone conversations, use of the internet, and meetings of resident and family groups. (HSC 1569.269(a)(2); CCR 87468.2(a)(1))
- Residents have the right to visit privately, without prior notice, with persons of their own choosing, including relatives, ombudsman, and other advocacy representatives. (HSC 1569.269(a)(24); CCR 87468.1(a)(11))
- Residents have the right to reasonable access to telephones. (CCR 87468.1(a)(14))
- Residents have the right to receive mail and correspondence promptly and unopened. (CCR 87468.1(a)(15))
- The facility must promptly respond to communications by residents' family members and legal representatives. (CCR 87468.1(a)(9))
- Residents have the right to confidential treatment of their records and personal information, and to approve their release. (HSC 1569.269(a)(3); CCR 87468.2(a)(2))
- Residents have the right to prompt access to review all of their records and to purchase photocopies. Photocopies must be provided within two business days, at a cost not to exceed the community standard for photocopies. (HSC 1569.269(a)(21); CCR 87468.2(a)(19))

## Protection of Funds/Property

- Residents have the right to protection of their property from theft or loss. (HSC 1569.269(a)(28), 1569.152, 1569.153, 1569.154; CCR 87468.2(a)(25)) See CANHR's Fact Sheet on RCFE **Theft and Loss** for more information about these rights.
- Residents have the right to manage their financial affairs. Facilities must not: require residents to deposit their personal funds with the facility; act as a guardian or conservator of the person or estate of a resident; act as a representative payee of a resident; serve as an agent for a resident under a power of attorney; act as a joint tenant on any account with a resident; or enter into a loan or borrow money from a resident, without giving the resident a notarized written agreement outlining the terms of the repayment. (HSC 1569.269(a)(29); CCR 87468.2(a)(26))
- The licensee must inform the resident of the facility's obligation to safeguard the resident's

property. (HSC 1569.152, 1569.153, 1569.154; CCR 87217, 87218)

- The licensee shall provide access to individual storage space for private use. (CCR 87468.1(a)(13))

### **Filing Complaints**

- Residents have the right to present grievances and recommend changes in policies, procedures, and services, without restraint, coercion, discrimination, reprisal, or other retaliatory action. (HSC 1569.269(a)(11); CCR 87468.2(a)(9))
- The facility must inform residents of the right and procedure to file complaints with licensing. (CCR 87468.1(a)(4))
- Any person can file a complaint with licensing. (HSC 1569.35(a))
- The facility must prominently post procedures for filing confidential complaints. (CCR 87468(c))
- Residents have the right to contact licensing, the Ombudsman, or both, regarding grievances against the facility, and the facility must conspicuously post their telephone numbers and addresses in a location easily accessible to residents. (HSC 1569.269(a)(12); CCR 87468(c), 87468.2(a)(10))
- The licensee must notify residents that licensing reports are available for review. (HSC 1569.38)

### **Complainant's Rights (HSC 1569.35)**

The licensing department shall:

- Inform complainant promptly of licensing's proposed course of action.
- Make an onsite investigation within 10 days of receiving the complaint.
- Protect the confidentiality of the complainant.
- Notify the complainant of the results of the investigation.

*HSC refers to California Health and Safety Code; and CCR refers to the California Code of Regulations, Title 22, Division 6, Chapter 8: Residential Care Facilities for the Elderly.*