

## Admission Agreement Bill Amended Serious Concerns Remain

SB 211 (Dunn), sponsored by the California Advocates for Nursing Home Reform (CANHR), passed out of Senate Health & Human Services Committee on March 26. There have been significant changes to SB 211 since it was originally introduced but there are still major concerns. Here's the latest...

### *What was CALA successful in amending OUT of the bill?*

- It no longer prohibits a provider from offering a new service or technology to residents if it wasn't included in the initial admission agreement.
- It no longer prohibits involuntary relocation, regardless of a resident's health status or failure to pay.
- It no longer requires admission agreements to expire after a set term.

Two additional amendments have been offered but were not in print at the time of the committee hearing. It is anticipated that amendments will address these two other problematic areas:

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## Community Care Licensing Adult & Senior Care Update

by Dave Dodds  
Deputy Director, Community Care Licensing Division

This is our first Adult and Senior Care Update for 2003. It also marks the tenth year of our efforts to keep the residential care community informed about licensing programs and services. The Updates continue to be an important method for sharing information. We appreciate your support in sharing these Updates with those in your organization and others interested in adult and senior care issues.

### REGULATIONS UPDATE

The following regulation packages are in process for adult and senior care facilities. If you have questions about any of the proposed regulations, please contact Carole Jacobi, Chief of the Policy Development Bureau, at (916) 324-4312. For copies of the proposed regulations or more information about hearing schedules, contact the Department's Office of Regulations Development at (916) 657-2586 or visit their website at [www.dss.cahwnet.gov/ord/default.htm](http://www.dss.cahwnet.gov/ord/default.htm).

Please note that depending on the version of software you are currently using, it might be necessary to press your control key to activate the hyperlinks found throughout this document.

**Reformatted Regulations for Residential Care Facilities for the Elderly:** We are reformatting the RCFE regulations into a more user-friendly format. No content of the RCFE regulations is being changed. Some regulations will be moved to group like topics. Also, some regulation sections are being renumbered. In addition to being more user friendly, the new format will more closely align with the comprehensive visit guidelines. Since no content is being changed, there will be no public hearing. We anticipate that these regulations will become effective in early March 2003.

**Dementia Regulations for Residential Care Facilities for the Elderly:** These regulations address necessary safeguards for residents with dementia, while maximizing their independence. The

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## Register Now for *Celebrating the Past, Creating the Future*

CALA members will gather June 8 – 10 to learn new skills, hear the latest from experts and see the newest products and services. CALA's spring conference will feature sessions from revising your risk management systems, to updating your dementia care program, to integrating new staff training techniques. Here are a few of the highlights:

### Keynote Session: Trust as the Quantum Competitive Advantage

Dr. Arthur Ciancutti is a physician, author, speaker, facilitator, and founder of the Learning Center. Dr. Ciancutti's interest in teamwork grew out of his work as an Emergency

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# Legal Update - Attorney Requests for Resident Records

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by Joel S. Goldman & Allan D. Jergesen  
Hanson Bridgett Marcus Vlahos & Rudy

With increasing frequency, we are being asked to advise RCFEs that have received requests from attorneys for copies of a resident's records. Such requests generally arise under two circumstances: where an attorney representing a resident or former resident is considering filing a personal injury lawsuit against the RCFE or when the attorney is considering filing a lawsuit against a third party, such as a physician or a hospital. In these circumstances, it is important for RCFEs to be aware of their legal rights and obligations.

## Evidence Code Section 1158

California Evidence Code Section 1158 gives persons certain specified rights to access their medical records. Attorneys requesting resident information from RCFEs frequently cite Section 1158 or, without mentioning that section, structure their requests for information in accordance with its requirements. Section 1158 applies to a list of licensed health care professionals who maintain medical records in their private offices. In addition, it applies to any "licensed hospital." This certainly includes general acute care and specialty hospitals. It probably also includes skilled nursing facilities. *However, it does not include residential care facilities for the elderly.* Therefore, Section 1158 has no application to assisted living providers.

## Voluntary Compliance

Even though RCFEs are not required to turn over resident records to a resident's attorney under Section 1158 (or under any other California law), it often makes sense for a provider to do so. If an attorney is considering filing a lawsuit against your community, your refusal to turn over records voluntarily is very unlikely to make him or her disappear. In fact, your conduct may suggest that you have something to hide. This may encourage the attorney to file a lawsuit, thereby gaining the right to subpoena the records as part of the discovery process.

Even though it is generally advantageous to cooperate with requests for information, there may be certain circumstances in which it is preferable not to do so. For example, the request for information may be overly broad or may include documents that are subject to an evidentiary privilege. Or there could be strategic advantages to consider. Because every situation is different, it is advisable to consult with legal counsel when requests for documents are made. In addition, you should consider contacting your liability insurance carrier if the request appears to suggest unhappiness with the care provided in your community.

## Confidentiality Requirements

Assuming that you have made a decision to cooperate with an attorney and provide resident records, it is critical that you be aware of regulatory confidentiality requirements.

Section 87570(c) of Title 22 of the California Code of Regulations states, "All information and records obtained from or regarding residents shall be confidential." This is a very broad provision. It then goes on to say:

"The licensee shall be responsible for storing active and inactive records and for safeguarding the confidentiality of their contents. The licensee and all employees shall reveal or make available confidential information only upon the resident's written consent or that of his designated representative."

(Note, subsection (e) contains an exception and makes it clear that the Department of Social Services has the right to inspect and reproduce all resident records.)

Given the above, an RCFE must obtain a written authorization from a resident or resident's legal representative before voluntarily releasing personal information to the resident's attorney. Where competent, the resident alone can sign the authorization. We have seen situations in which a resident's relative who has been named as agent in a power of attorney for health care authorizes disclosure to the resident's attorney, even though the resident is still mentally competent. Such an authorization is invalid because the relative has no authority to act as the resident's agent as long as the resident is mentally competent. Therefore, the RCFE should not honor it.

In some cases, an RCFE may not know whether the resident is or is not competent. For example, a resident may have mild dementia when he leaves your community, but may still be legally competent. If the resident's agent subsequently authorizes the release of the resident's records, you should request documentation showing that the resident is now incapacitated.

## Deceased Residents

Attorneys sometimes request records of a former resident who is now deceased. When a resident dies, an agent under a power of attorney for health care loses authority to act on the resident's behalf. The power of attorney expires at the same time as the resident. In that case, the person who has legal authority to act on behalf of the deceased resident's estate must sign the authorization. Where the resident has a will, this will be the executor nominated in that document and appointed by the probate court. Where the resident has no will, it will be the administrator of the estate appointed by the court. In either case, you should request a copy of the court order of appointment to confirm that the person signing the authorization has the necessary legal authority. ■