

Legal Update - RCFE Admission Agreements Revisited

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The August, 2001 CALA *Bulletin* contained a Legal Update on RCFE admission agreements. With the implementation of SB 1898 on January 1, 2003, the ever-changing assisted living environment, and the recent introduction of SB 211 by the California Advocates for Nursing Home Reform (CANHR), it is evident that renewed focus has been placed on RCFE admission agreements. For that reason, this Update will revisit RCFE admission agreements, covering topics (with one or two exceptions) not covered previously. Readers may wish to refer to the prior Update as well, as most of the suggestions contained in it still pertain.

1. **Use Understandable Language.** It is more important than ever that your admission agreement be written in terms that the average (80-year old) consumer can understand. The use of plain, clear English in your admission agreement and related documents is beneficial from both a marketing and a legal prospective. If a jury (or worse yet, a judge) cannot understand your admission agreement, you cannot expect them to believe that a resident understood it. Conversely, a resident (or resident's family) will have a hard time arguing to a court that they did not understand a provision that is spelled out clearly in simple, every day language.
2. **Single Pre-Admission Fee.** As noted in a recent Update, SB 1898 provides that you can only have a single "pre-admission fee." For those of you who wish to charge a pre-admission fee that is applicable to all residents (such as a processing fee or community fee) and charge additional special fees that pertain to some residents (such as a pet fee), you will need to combine these fees into a single fee that has separate components, some of which only apply to some residents. For example, your admission agreement might state, "Prior to admission, you paid a non-refundable pre-admission fee of \$____. \$____ of this fee is to compensate the community for the costs of processing your application, assessing you and admitting you to the community. In addition, if you have a pet, \$____ of the pre-admission fee is to compensate the community for the costs associated with you having a pet."
3. **Fee Schedule.** SB 1898 also requires that you "clearly specify" any fee that you charge, whether prior to or after admission. It is therefore imperative that you include as part of your admission agreement a comprehensive fee schedule that covers all optional services.
4. **Arbitration.** Our prior Update discussed the advantages that can be afforded by putting in a binding arbitration provision. There is nothing currently in California law or regulation that prohibits binding arbitration (but see SB 211). In fact, Dave Dodds, Deputy Director of Community Care Licensing, stated at the recent CALA Public Policy Conference that he believes that arbitration is a good idea.
5. **Disclosure of Possibility of Falls.** A number of providers have begun to include a statement in their admission agreement

(or other admission documents) that discusses the possibility of falls. Although such disclosure will not exculpate you from potential liability, it can be helpful if you put residents and their families on notice that falls may occur. You may wish to emphasize that your community encourages physical activity, that you are not a health care facility and therefore cannot (and do not want to) restrain residents, and that as a result, falls may occur. You may want to also advise that if residents or their families wish for the resident to be in a more sheltered environment, perhaps your RCFE is not appropriate for them.

6. **Security Deposit Prohibition.** SB 1898 makes it clear that a security deposit of any kind is not permitted. We stated in our August, 2001 Update that although it was the policy of the Department not to permit security deposits, there was no legal basis for that policy. Now there is. Any reference to security deposits, including security deposits for smokers, pet owners or motorized cart users should be deleted.
7. **Service Animals.** If your admission agreement contains a provision that excludes or limits pets, you should state that the restrictions do not apply to bona fide service animals. RCFEs must allow residents with seeing eye dogs or other service animals to have access to all parts of the community. You cannot impose weight limits on service animals nor can you charge a pet fee for such animals. You can, however, charge a resident for damage caused by a service animal and require that a resident provide appropriate care for a service animal.
8. **Visitor Behavior.** We recommend that your admission agreement (or house rules that are incorporated by reference into your admission agreement) contain a statement that residents are responsible for ensuring that their visitors abide by house rules, including treating staff respectfully.
9. **Renter's Insurance.** You may wish to include a provision in your admission agreement that recommends that residents obtain renter's insurance. This will help reduce claims against you for lost or stolen items. You may wish to inquire as to whether your community's liability insurance carrier will offer individual policies to your residents.
10. **Outside Caregivers.** Your admission agreement (or resident handbook) should contain a statement related to the use by residents of outside caregivers, including private duty attendants and home health agency personnel. Please note that the Department of Social Services has taken the position that outside personnel cannot provide basic services (including ADL care) to your residents.
11. **Motorized Carts.** Your admission agreement (or resident handbook) should contain a provision stating that residents who wish to utilize motorized carts must abide by the community's motorized cart policies. (This provision presumably will not be applicable for special care dementia communities.) Providers should have in place a motorized cart policy that appropriately balances the right of disabled residents to utilize carts and the need to protect other residents from their danger.

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12. **Inquiries Regarding Religion**. Finally, your admission forms should not ask for information about a prospective resident's religion. This information can appropriately be obtained after a resident is admitted. Asking for this information prior to admission, however, is an invitation to a lawsuit if you choose not to accept a resident who may be a member of a particular religion.

For more information on admission agreements, please refer to the August 2001 *Bulletin*. ■