

Legal Update:

Food Service Not Subject to County Oversight

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In recent months, we have received numerous reports of County Boards of Health attempting to assert jurisdiction over food service operations of residential care facilities for the elderly (“RCFEs”). In some cases, county inspections have been taking place for years while in other instances counties are first attempting to assert their authority.

California law is clear on this issue. Food service operations of RCFEs are subject only to regulation by the Department of Social Services (“DSS”). California Health and Safety Code §114470 states as follows:

“Child care facilities, community care facilities, and residential care facilities for the elderly shall not be deemed to be either food establishments, as defined in Section 113780, or food facilities, as defined in Section 113785, and, therefore, shall be exempt from this chapter.”

This means that the California Uniform Retail Food Facilities Law (“CURFFL”) does not apply to RCFEs. However, there is a current bill pending before the Legislature (SB 144 (Runner)), that would specifically remove the RCFE exemption from retail food facility inspections. CALA is vigorously opposing this legislation unless it is amended to retain the RCFE and community care facility exemption. The exemption issue is one component of a complete overhaul of the CURFFL requirements. Working with the Senator, DSS, other community care licensed facilities, and the sponsors, CALA is confident that our issues will be resolved in a timely way.

Unless and until this (or similar) legislation passes, RCFEs should gently but firmly advise County Health Inspectors of Section 114470 and decline to allow them to inspect your community. DSS may, however, request local health inspector involvement in cases where they determine there is a need.

Food service operations are already highly regulated by DSS. County oversight is duplicative and may well lead to contrary directives. Moreover, counties charge substantial annual fees for these redundant and unnecessary inspections. RCFEs that continue to incur problems with County Departments of Health after advising them of the RCFE exemption are urged to contact CALA. ■