

"I Didn't Know That Was In The Regs"

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The edges around my copy of Title 22 are, to say the least, worn. Rarely does a day go by when I do not refer to the RCFE regulations in response to a client question or problem. However, even though I have been accused of having memorized Title 22, I am regularly surprised to come across some provision which I had forgotten or of which I was simply not aware. This Legal Update will point out random provisions contained in the RCFE regulations and the RCFE statute that may have escaped the attention of some providers.

Regulation Section 87107(a)(4)

This section is of particular relevance to RCFE providers that have an unlicensed portion of their community. This regulation exempts congregate senior communities from RCFE licensure if no element of care and/or supervision is provided, made available or contractually promised. However, this section contains an important exception. It states, "This shall not preclude care and/or supervision provided for brief and irregular periods of time for reasons such as temporary illnesses or emergencies provided that such is determined to be minor and temporary and does not require 24-hour supervision of the resident(s)."

Health and Safety Code Section 1569.313

This provision in the RCFE law requires that an RCFE "post notice of its visiting policy at a location in the facility that is accessible to residents and families."

Regulation Section 87117

This section requires that a licensee notify the Department of Social Services in writing of any change in mailing address (i.e., the corporate as opposed to facility mailing address) within ten calendar days.

Health and Safety Code Section 1569.38

This section requires that RCFEs "place in a conspicuous place copies of all licensing reports issued by the department within the preceding 12 months, and all licensing reports issued by the department resulting from the most recent annual visit of the department to the facility." This section provides an exception for portions of a licensing report referring to a complaint that was determined to be unfounded or unsubstantiated. This provision also requires that each RCFE, during the admission process, inform the resident and the resident's responsible person in writing that licensing reports are available for review at the facility and that copies of these reports and other information about the facility are available from the DSS District Office. Note that providers can readily comply with this requirement through a simple provision in their admission

agreement.

Regulation Section 87343

This regulation affords each RCFE licensee the right, without prejudice, to file complaints with the Department regarding "any alleged misapplication or capricious enforcement of regulations by any licensing representative, or any substantial differences in opinion as may occur between the licensee and licensing representative concerning the proper application of the [RCFE law or regulations]." While it obviously would be imprudent for a provider to file a formal complaint every time there was a minor disagreement with its LPA, providers should avail themselves of the right to file a complaint where their LPA acts truly unreasonably.

Health and Safety Code Section 1569.47

This section deals with placement agencies which is defined broadly to include hospital discharge planners. Among the requirements of this section is the mandate that "a placement agency shall not place individuals in licensed residential care facilities for the elderly when the individual, because of his or her condition, cannot be cared for within the limits of the license or requires inpatient care in a health facility." The law further provides that violation of that provision is misdemeanor.

Regulation Section 87560(c)

This section requires that any change in the chief corporate officer of an organization be reported to the Department in writing within 15 working days following such change. It further requires that the notification include the name, address and fingerprint card of the new chief executive officer.

Health and Safety Code Section 1569.314

This section forbids an RCFE from requiring residents to purchase medications from any particular pharmacy or other source. However, this section also states that it does not preclude an RCFE from requiring residents who need assistance with medications from complying with the facility's policies and procedures regarding stored medications and methods of assisting residents with the taking of medications, "if the policies and procedures are reasonably necessary and meet the intent of the state or federal regulations." Although this provision is not a model of clarity, it would seem to support the practice of many providers of requiring that medications be "bubble packed."

Regulation Section 87721

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Most providers are aware of the fact that regulation Section 87116, "Program Flexibility," permits providers to apply for waivers and exceptions that may allow them to retain residents who are otherwise inappropriate. Lesser known is Section 87721 which states that, "as specified in Section 87116, the licensee may submit a written exception request if he/she agrees that the resident has a prohibited and/or restrictive health condition but believes that the intent of the law can be met through alternative means." This regulation requires documentation of the resident's current health condition and prognosis, as well as the RCFE's plan for ensuring that the resident's health-related needs can be met by the facility. It also requires a plan for minimizing the impact on other residents.

Health and Safety Code Section 1569.37

This section provides that a licensee may not discriminate or retaliate in any manner against any resident or any employee because that person has initiated or participated in a complaint to the Department.

Regulation Section 87566(f)

This relatively new regulatory provision deals with accessibility of personnel records to the Department. It allows the Department to remove records, but subjects the Department to a variety of requirements including limitations on taking current emergency or health-related information unless copies remain in the building. It also requires that any records that are taken for copying be returned undamaged and in good order within three business days. Note, similar provisions have been added in a new subsection (d) to Section 87570 pertaining to resident records.

Health and Safety Code Section 1569.61

This section provides that a public file for each RCFE "shall be available immediately upon the request of any consumer. . . ." However, in our experience, the Department has typically required advance notice before granting access to RCFE files in order to cull confidential information from the file. ■