

**DEPARTMENT OF SOCIAL SERVICES**

744 P Street, Sacramento, CA 95814



June 14, 2005

Regulation Package #0803-18

CDSS MANUAL LETTER NO. CCL-05-04

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22, DIVISION 6,  
CHAPTER 8.5, RESIDENTIAL CARE FACILITIES FOR THE CHRONICALLY ILL

**Regulation Package #0803-18****Effective 6/8/05****Sections 87844, 87866, and 87870**

This manual letter has been posted on the Office of Regulations Development website at [http://www.dss.cahwnet.gov/ord/Residentia\\_634.htm](http://www.dss.cahwnet.gov/ord/Residentia_634.htm).

These regulations will give licensing staff the express authority to copy client or facility records, and to remove them if necessary for copying. The existing regulations do not consistently permit the copying of client or facility records, which has been a hindrance to the licensing program. For example, one licensee of a facility being investigated refused even to let licensing staff hand-copy portions of facility files because the regulations did not clearly state that licensing staff could copy those files.

These regulations will correct the situations described above. They delineate and amplify the licensing program's authority to inspect, audit, and copy client or facility records upon demand during normal business hours; and to remove them if necessary for copying. At the same time, the regulations contain safeguards that prohibit the removal of emergency or health-related information (unless other copies of those documents are available) and establish standards for the safe removal and timely return of records to facilities. They cut across facility categories and apply to all licensed adult and elderly community care facilities, children's residential community care facilities, and child day care facilities. These regulations will ensure that CDSS has reasonable access to information in order to be able to better evaluate facilities, investigate complaints, and protect the health and safety of clients in care.

These regulations were considered at the Department's public hearing held on June 16, 2004.

**FILING INSTRUCTIONS**

**Revisions to all manuals are shown in graphic screen.** The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Community Care Licensing changes was Manual Letter No. CCL-05-03. The latest prior manual letter containing Residential Care Facilities for the Chronically Ill regulation changes was Manual Letter No. CCL-04-15.

<u>Page(s)</u>	<u>Replace(s) Page(s)</u>
1 and 2	1 and 2
58 through 61	58 through 61
86 and 87	86 and 87
95 through 98.1	95 through 98

Attachments

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**87842 REVOCATION OR SUSPENSION OF LICENSE (Continued)****87842**

- (b) The Department may temporarily suspend any license prior to any hearing, if the action is necessary to protect residents of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety.
- (1) The Department shall notify the licensee of the temporary suspension and the effective date of the temporary suspension and at the same time shall serve such licensee with an accusation.
  - (2) Upon receipt of a notice of defense to the accusation from the licensee, the Department shall, within 15 days, set the matter for hearing.
  - (3) The hearing shall be held as soon as possible but not later than 30 days after receipt of such notice.
  - (4) The temporary suspension shall remain in effect until the hearing is completed and the Department has made a final determination on the merits.

<b>87842</b>	<b>REVOCAION OR SUSPENSION OF LICENSE (Continued)</b>	<b>87842</b>
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- (A) The temporary suspension shall be deemed vacated if the Department fails to make a final determination on the merits within 30 days after the original hearing has been completed.
  
- (c) Proceedings to hear a revocation action or a revocation and temporary suspension action shall be conducted pursuant to the provisions of Government Code Section 11500 et seq.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Sections 1568.042(c), 1568.072, and 1568.082, Health and Safety Code.

<b>87843</b>	<b>LICENSEE/APPLICANT COMPLAINTS</b>	<b>87843</b>
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- (a) Each licensee/applicant shall have a right, without prejudice, to notify the Department of any alleged misapplication or capricious enforcement of regulations by any licensing representative, or of any differences in opinion between the licensee and any licensing representative concerning the proper application of these regulations.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Section 1568.072, Health and Safety Code.

<b>87844</b>	<b>INSPECTION AUTHORITY OF THE DEPARTMENT</b>	<b>87844</b>
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- (a) The Department shall have the authority to conduct an inspection of any licensed residential care facility or residential care facility which has applied to be licensed at any time.
  - (1) The Department shall conduct an inspection of the licensed facility within 90 days after the date of issuance of a license.
  - (2) Any duly authorized officer, employee, or agent of the Department may, upon presentation of proper identification, enter and inspect any place providing personal care, supervision and services at any time, with or without advance notice, to secure compliance with, or to prevent a violation of, any provision of this chapter.

<b>87844</b>	<b>INSPECTION AUTHORITY OF THE DEPARTMENT</b>	<b>87844</b>
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- (b) An inspection of a Residential Care Facility for the Chronically Ill as a result of a request for inspection shall be governed by the following provisions:
- (1) Any person may request an inspection of the facility. The request may be made anonymously.
  - (2) The request for an inspection may be made to the Department either orally or in writing.
  - (3) The Department shall act upon a request for inspection as specified below if the request alleges a violation of applicable statute or regulation by the facility:
    - (A) If the complaint does not allege a denial of a statutory right of access to the facility the Department shall do the following:
      1. Make a preliminary review of the complaint to determine if it is willfully intended to harass the licensee or is without any reasonable basis.
      2. If the complaint is neither willfully intended to harass the licensee nor is without any reasonable basis, inspect the facility and investigate the complaint within 10 days after receiving the complaint. Notwithstanding the preceding sentence, the Department shall not be required to inspect the facility within 10 days after receiving the complaint if doing so would adversely affect the Department's investigation or the investigation of another agency.
      3. Promptly inform the complainant, if not anonymous, of the Department's proposed course of action in response to the complaint.
    - (B) If the complaint alleges denial of a statutory right of access to the facility the Department shall do the following:
      1. Review the complaint.
      2. Promptly inform the complainant, if not anonymous, of the Department's proposed course of action in response to the complaint.

<b>87844</b>	<b>INSPECTION AUTHORITY OF THE DEPARTMENT</b>	<b>87844</b>
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(Continued)

- (4) The Department shall not be required to act upon a request for inspection if the request does not allege a violation of an applicable statute or regulation by the facility.
- (5) The Department shall not disclose the identity of the complainant or of any other person named in the complaint unless the complainant authorizes disclosure of those identities.
- (6) The Department shall provide the substance of the complaint to the licensee of the facility at a time no sooner than at the time of the inspection made in response to the complaint.

(c) The Department shall have the authority to interview residents or staff members without prior consent.

- (1) The licensee shall ensure that provisions are made for private interviews with any residents or staff members.

(d) The Department shall have the authority to inspect, audit, and copy resident or facility records upon demand during normal business hours. Records may be removed if necessary for copying. Removal of records shall be subject to the requirements in Sections 87866(c) and 87870(d).

- (1) The licensee shall make provisions for the examination of all records relating to the operation of the facility.

(e) The Department shall have the authority to observe the physical condition of the resident, including conditions which could indicate abuse, neglect, or inappropriate placement, and to have a licensed medical professional physically examine the resident.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Sections 1568.07, 1568.071 and 1568.072, Health and Safety Code.

<b>87845</b>	<b>EVALUATION VISITS</b>	<b>87845</b>
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- (a) All facilities shall be evaluated periodically and inspected by the Department to determine compliance with applicable laws and regulations.
- (b) The Department shall have the authority to conduct evaluations and inspections at least once per year or more often if deemed necessary by the Director.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Sections 1568.07 and 1568.072, Health and Safety Code.

**87866 PERSONNEL RECORDS****87866**

- (a) The licensee shall ensure that personnel records are maintained on the licensee, administrator and each employee. Each personnel record shall contain the following information:
- (1) Employee's full name.
  - (2) Driver's license number if the employee is to transport residents.
  - (3) Date of employment.
  - (4) A statement signed by the employee that he/she is at least 18 years of age.
  - (5) Home address and phone number.
  - (6) Documentation of educational background, continuing education hours, training and/or experience, as specified in Section 87865.
  - (7) Past work experience, including types of employment and former employers.

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**HANDBOOK BEGINS HERE**

- (A) Section 1568.09(c)(4) of the Health and Safety Code provides in part:

Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision.

- (B) Section 1568.09(b)(2) of the Health and Safety Code provides:

Any person, other than a client, residing in the facility.

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**HANDBOOK ENDS HERE**

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- (8) Duties of the employee.
- (9) Termination date, if no longer employed by the facility.
- (10) Documentation of first aid training.
- (11) Criminal record statement signed by the employee, as required by Section 87819.
- (12) Documentation of either a criminal record clearance or a criminal record exemption as required by Section 87819(d).

**87866 PERSONNEL RECORDS (Continued)****87866**

- (13) A health screening as specified in Section 87865(h).
- (14) Tuberculosis test documents as specified in Section 87865(h).
- (b) Personnel records shall be maintained for all volunteers and shall contain the following:
  - (1) A health statement as specified in Section 87865(h)(2)(C).
  - (2) Tuberculosis test documents as specified in Section 87865(h).
  - (3) For volunteers that are required to be fingerprinted pursuant to Section 87819:
    - (A) A signed statement regarding their criminal record history as required by Section 87819(a)(3).
    - (B) Documentation of either a criminal record clearance or a criminal record exemption as required by Section 87819(d).
- (c) All personnel records shall be available to the Department to inspect, audit, and copy upon demand during normal business hours. Records may be removed if necessary for copying. Removal of records shall be subject to the following requirements:
  - (1) Licensing representatives shall not remove any current emergency or health-related information for current personnel unless the same information is otherwise readily available in another document or format.
  - (2) Prior to removing any records, a licensing representative shall prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the administrator or designee.
  - (3) Licensing representatives shall return the records undamaged and in good order within three business days following the date the records were removed.
- (d) All personnel records shall be retained for at least three years following termination of employment.
- (e) All personnel records shall be maintained at the facility site.
  - (1) The licensee shall be permitted to retain such records in a central administrative location provided that they are readily available to the Department at the facility site as specified in Section 87866(c).
- (f) In all cases, personnel records shall document the hours actually worked.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Section 1568.072, Health and Safety Code.

**87868.4 RESIDENT REQUESTS FOR REVIEW OF RELOCATION  
DECISIONS****87868.4**

- (a) A resident and/or his/her authorized representative may request a review and determination of the Department's Written Notice to Relocate specified in Section 87868.3 (b).
- (1) The resident's right to a review of the Written Notice to Relocate by the Department shall not:
    - (A) Nullify a determination by the Department that the resident's health and safety are in immediate danger and immediate relocation is required.
    - (B) Apply to the eviction procedures outlined in Section 87868.1.
    - (C) Authorize a right to a fair hearing or any other review process not specified in this chapter.
  - (2) The resident and/or his/her authorized representative shall file the request for review with the licensee within three working days after his/her receipt of the Department's Written Notice to Relocate.
  - (3) The licensee shall forward the request to the Department within two (2) working days of receipt of the resident's request for review.
  - (4) The Department shall not refuse to consider the request if the licensee fails or refuses to submit the request as specified in Subsection (a)(3) above.
- (b) The Department shall have 30 days from the date that the resident was initially informed by the Department to relocate in which to complete the review and make a determination on the request.
- (1) The Department shall notify the resident and/or his/her authorized representative of that determination.
  - (2) If the determination is made that the resident must relocate, the Department shall send a revised Written Notice to Relocate to the resident and/or his/her authorized representative.

<b>87868.4</b>	<b>RESIDENT REQUESTS FOR REVIEW OF RELOCATION DECISIONS (Continued)</b>	<b>87868.4</b>
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- (A) The Department shall send copies of the Written Notice to Relocate to the licensee, resident's physician and surgeon and the Registered Nurse Case Manager.
- (B) The Written Notice to Relocate shall include a plan for transfer which specifies the date for completion of the relocation.
- (C) The Written Notice to Relocate shall specify that the licensee shall follow procedures to minimize transfer trauma for the resident during the relocation, as specified in Section 87868.2.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Sections 1568.072 and .073, Health and Safety Code.

<b>87870</b>	<b>RESIDENT RECORDS</b>	<b>87870</b>
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- (a) The licensee shall ensure that a separate, complete, and current record is maintained in the facility for each resident.
- (b) Each record shall contain information including, but not limited to, the following:
  - (1) Name of resident.
  - (2) Birthdate.
  - (3) Sex.
  - (4) Date of admission.
  - (5) Names, addresses, and telephone numbers of the authorized representative.
  - (6) A signed copy of the admission agreement specified in Section 87868.
  - (7) Name, address and telephone number of physician, surgeon and dentist, and other medical and mental health providers, if any.
  - (8) Medical assessment, including ambulatory status.
  - (9) Copy of tests for tuberculosis:
    - (A) Results of a Mantoux tuberculin skin test recorded in millimeters and dated no more than three months prior to the resident's placement into the facility, excluding residents who have had a previously positive reaction.

<b>87870</b>	<b>RESIDENT RECORDS (Continued)</b>	<b>87870</b>
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- (1) For a resident who has had a previously positive reaction, there shall be written documentation to verify that he/she tested positive for tuberculosis.
- (B) Results of chest x-ray dated no more than three months prior to the resident's placement into the facility.
- (C) If the chest x-ray is abnormal or the Mantoux tuberculin skin test is positive, a copy of the physician's statement verifying that the resident does not have communicable tuberculosis.
- (D) Copy of the test results updated once per year, if applicable, as specified in Section 87894(d).
- (10) Record of any illness or injury requiring treatment by a physician or dentist and for which the facility provided assistance to the resident in meeting his/her necessary medical and dental needs.
- (11) Record of current medications, including the name of the prescribing physician, and instructions, if any, regarding control and custody of medications.
- (12) Date of termination of services.
- (13) An accounting of the resident's cash resources, personal property, and valuables entrusted to the licensee.
- (14) The name, address, and telephone number of any person or agency responsible for the care of a resident, including, but not limited to, persons who have been granted durable power of attorney for the resident or conservators for the resident and/or his/her estate as specified in Section 87868(b)(9).
- (15) Weekly weight record.
- (16) Copy of the "DO NOT Resuscitate Order", provided the resident has agreed to and signed the order.
- (17) Copy of the Durable Power of Attorney for Health Care document signed by the resident.
- (18) Information regarding the resident's individual services plan/team as specified in Section 87896.
- (19) Copy of the current log as specified in Section 87894(f).

**87870 RESIDENT RECORDS (Continued)****87870**

- (c) All information and records obtained from or regarding the resident shall be confidential.
- (1) The licensee shall be responsible for safeguarding the confidentiality of resident records.
  - (2) Except as specified in (d) below, or as otherwise authorized by law, the licensee and all employees shall not reveal or make available confidential information.
- (d) All resident records shall be available to the Department to inspect, audit, and copy upon demand during normal business hours. Records may be removed if necessary for copying. Removal of records shall be subject to the following requirements:
- (1) Licensing representatives shall not remove the following current records for current residents unless the same information is otherwise readily available in another document or format:
    - (A) Name, address, and telephone number of the resident's authorized representatives(s), if any, as specified in Section 87870(b)(5) and defined in Section 87801(a).
    - (B) Name, address, and telephone number of the resident's physician, surgeon and dentist, and other medical and mental health providers, if any, as specified in Section 87870(b)(7).
    - (C) Medical assessment, including ambulatory status, as specified in Section 87870(b)(8).
    - (D) Results of tuberculosis skin tests, including a current log of the results of tuberculosis skin tests, as specified in Sections 87870(b)(9) and (b)(19).
    - (E) Record of any current illness or injury requiring treatment by a physician or dentist for which the facility provided assistance as specified in Section 87870(b)(10).
    - (F) Record of current medications as specified in Section 87870(b)(11).
    - (G) Name, address, and telephone number of any person or agency responsible for the care of a resident as specified in Section 87870(b)(14).
    - (H) Weekly weight record as specified in Section 87870(b)(15).
    - (I) Copy of signed "DO NOT Resuscitate Order" as specified in Section 87870(b)(16) and defined in Section 87801(d).
    - (J) Copy of signed Durable Power of Attorney for Health Care as specified in Section 87870(b)(17) and defined in Section 87801(d).
    - (K) Information regarding the resident's individual services plan/team as specified in Section 87870(b)(18) and defined in Section 87801(i).

<b>87870</b>	<b>RESIDENT RECORDS (Continued)</b>	<b>87870</b>
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- (L) Any other records containing current emergency or health-related information for current residents.
  - (2) Prior to removing any records, a licensing representative shall prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the administrator or designee.
  - (3) Licensing representatives shall return the records undamaged and in good order within three business days following the date the records were removed.
- (e) A resident's records shall be open to inspection by the resident's authorized representative, if any.
- (f) The information specified in (b) above shall be updated as necessary to ensure the accuracy of the resident's record.
- (g) Original resident records or photographic reproductions shall be retained for at least three years following termination of service to the resident.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Sections 1568.072, and 1568.08, Health and Safety Code.

<b>87872</b>	<b>PERSONAL RIGHTS</b>	<b>87872</b>
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- (a) Each resident shall have personal rights which include, but are not limited to, the following:
- (1) To be accorded dignity in his/her personal relationships with staff and other persons.
  - (2) To be accorded safe, healthful and comfortable accommodations, furnishings, and equipment to meet his/her needs.
  - (3) To be free from corporal or unusual punishment, infliction of pain, humiliation, intimidation, ridicule, coercion, threat, mental abuse, or other actions of a punitive nature, including but not limited to interference with daily living functions, including eating, sleeping, or toileting; or withholding of shelter, clothing, medication or aids to physical functioning.

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