

**DEPARTMENT OF SOCIAL SERVICES**

744 P Street, Sacramento, CA 95814



Regulation Package # 1208-09

CDSS MANUAL LETTER NO. CCL-09-03

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22,  
DIVISION 6, CHAPTER 6, ADULT RESIDENTIAL FACILITIES**Regulation Package # 1208-09****Effective 8/30/09****Section 85068.4**

This manual letter has been posted on the Office of Regulations Development website at <http://www.dss.cahwnet.gov/ord/PG637.htm>

These regulations implement the Settlement Agreement of October 27, 2008 between the California Association of Mental Health Patients' Rights Advocates (CAMHPRA) and the California Department of Social Services (CDSS). CAMHPRA filed a lawsuit against the CDSS on behalf of persons with mental health disabilities who are 60 years of age or older, claiming that the CDSS unlawfully excluded adults over the age of 59 from licensed Adult Residential Facilities (ARFs). The Agreement was reached between CAMHPRA and the CDSS in *California Association of Mental Health Patients' Rights Advocates v. Cliff Allenby, et al.*, Santa Clara County Superior Court, No. 106-CV061397. This Agreement specifies all of the actual regulatory language in this regulation.

The Agreement required the CDSS to adopt the regulations, to be known as the ARF Age Regulations. The regulations will allow licensees of ARFs to both retain and admit persons 60 years of age or older without obtaining an exception, subject to capacity limitations and compliance with specified requirements.

These regulations were considered at the Department's public hearing held on April 15, 2009.

## FILING INSTRUCTIONS

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-09-02. The latest prior manual letter containing Adult Residential Facilities regulation changes was Manual Letter No. CCL-05-16.

Page(s)

Replace(s)

20 through 20.1a.

Pages 20 and 20.1

Attachments

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**85068.3 MODIFICATIONS TO NEEDS AND SERVICES PLAN**  
(Continued)**85068.3**

- (2) If it is determined that the client's needs can be met, the licensee in conjunction with the consultant shall develop and maintain in the facility a written Needs and Services Plan that must include the following:
  - (A) Objectives, within a time frame, that relate to the client's problems and/or needs.
  - (B) Plans for meeting the objectives.
  - (C) Identification of any individuals or agencies responsible for implementing and evaluating each part of the plan.
  - (D) Method of evaluating progress.
- (3) If it is determined that the client's needs cannot be met, the licensee shall inform the client and/or his/her authorized representative, if any, or responsible person, if there is no authorized representative, of this fact and shall request that the client relocate.
  - (A) If the client refuses to relocate, the licensee may evict the client in accordance with Section 80068.5.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1507, and 1531, Health and Safety Code.

**85068.4 ACCEPTANCE AND RETENTION LIMITATIONS****85068.4**

- (a) The licensee shall not accept or retain the following:
  - (1) Persons with prohibited health conditions specified in Section 80091.
  - (2) Persons who require inpatient care in a health facility.
  - (3) Persons who have needs that are in conflict with the needs of other clients or the program of services offered.
  - (4) Persons who require more care and supervision than is provided by the facility.
  - (5) Any person whose primary need is acute psychiatric care due to a mental disorder.

**85068.4 ACCEPTANCE AND RETENTION LIMITATIONS**  
(Continued)**85068.4**

- (b) The licensee may admit or retain persons who are 60 years of age or older whose needs are compatible with those of other clients if they require the same level of care and supervision as the other clients in the facility and the licensee is able to meet their needs.
- (c) When a licensee admits or retains any person 60 years of age or older, the licensee shall ensure that all of the following information is contained in the person's file:
  - (1) Completed Functional Capabilities Assessment, required by Section 80069.2.
  - (2) Completed Needs and Services Plan, required by Section 85068.2. If one or more age-related care needs are identified by the provider or the referring source, the licensee shall ensure that the Needs and Services Plan specifies how such need(s) will be addressed.
  - (3) Documentation of a medical assessment, signed by a physician, made within the last year.
  - (4) A letter of support from the person's conservator with placement authority, if applicable.
  - (5) Letters of support, if any, from the person's placement officer, social worker, and/or mental health professional, if applicable, documenting that the Adult Residential Facility is the most appropriate setting for the person.
- (d) The licensee shall ensure that the Needs and Services Plan for each client 60 years of age or older is updated at least annually and in accordance with Section 85068.3.
- (e) The licensee shall ensure that the medical assessment for each client 60 years of age or older is updated at least annually and in accordance with the regulations addressing medical assessments in Residential Care Facilities for the Elderly (RCFE) [California Code of Regulations, Title 22, Sections 87458(b) and (c)].
- (f) The Department may require the licensee to comply with various regulations applicable to RCFEs if the Department determines that compliance with any such specific regulations is necessary to protect the health and safety of clients 60 years of age or older. Such regulations may include, but not be limited to, those pertaining to the training of staff members who assist clients with personal activities of daily living; the regular observation of clients for changes in physical, mental, emotional, and social functioning; and the notification of the client's physician and responsible person and/or authorized representative, if any, of documented changes.

**85068.4 ACCEPTANCE AND RETENTION LIMITATIONS**  
(Continued)**85068.4**

- (g) If acceptance or retention of an individual 60 years of age or older would result in the number of persons 60 years of age or older exceeding 50 percent of the census in facilities with a capacity of six or fewer clients, or 25 percent of the census in facilities with a capacity over six, the licensee must request an exception in order to accept or retain the individual. The exception request must be made in accordance with Section 80024. The documentation specified in Section 85068.4(c) must be submitted with the exception request.
- (h) Retention of all clients shall be in accordance with each client's Needs and Services Plan, required by Section 85068.2, and the criteria specified in Section 80092, Restricted Health Conditions.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1507, and 1531, Health and Safety Code; Joint Stipulation and Order for Settlement in the matter of *California Association of Mental Health Patients' Rights Advocates v. Cliff Allenby, et al.*, Santa Clara County Superior Court, No. 106-CV061397, issued November 14, 2008.

**85068.5 EVICTION PROCEDURES****85068.5**

- (a) The licensee shall be permitted to evict a client by serving the client with a 30-day written notice to quit for any of the following reasons:
- (1) Nonpayment of the rate for basic services within ten days of the due date.
  - (2) Failure of the client to comply with state or local law after receiving written notice of the alleged violation.
  - (3) Failure of the client to comply with the general facility policies as specified in the Admission Agreement.
  - (4) A needs and services plan modification has been performed, as specified in Section 85068.3, which determined that the client's needs cannot be met by the facility and the client has been given an opportunity to relocate as specified in Section 85068.3(b)(3).
  - (5) Change of use of the facility.
- (b) The licensee shall be permitted to evict a client by serving the client with a three-day written notice to quit provided that both of the following requirements have been met:
- (1) The licensing agency has granted prior written and/or documented telephone approval for the eviction.

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