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Regulation Package No. 0713-08

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TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, DIVISION 6

Regulation Package # 0713-08

Effective 1/1/15

Sections 85001, 85075

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

Assembly Bill 1961 amended Health and Safety (H&S) Code Section 1569.73 to allow for the acceptance of terminally ill persons already receiving hospice care into a Residential Care Facility for the Elderly (RCFE). AB 1166 affected both Adult Residential Facilities (ARFs) and RCFEs respectively by amending H&S Code sections 1507.3 and 1569.74 to accept a terminally ill person already receiving hospice care into an ARF and to allow licensees in both facility types to contact the hospice agency in lieu of calling 9-1-1 during an emergency situation for hospice terminally ill client/residents, under certain conditions. These regulations also incorporate prohibited health conditions into the hospice care plan and hospice waiver. Similarly, the ARF regulations incorporate restricted and prohibited health conditions into the hospice care plan and the hospice waiver.

The benefits of the regulatory action to the health and welfare of the terminally ill residents is to acknowledge the relationship between the individual and the hospice agency when the individual is actively dying and has elected to not be resuscitated as well as providing for a continuation of hospice care for individuals who elect to enter a residential care facility.

FILING INSTRUCTIONS

Revisions to all manuals are indicated by a vertical line in the left margin. 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-12-06. The latest prior manual letter containing Adult Residential Facilities regulations changes was Manual Letter No. CCL-09-03.

Page(s)

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Attachment

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85001 DEFINITIONS (Continued)**85001**

- (d) (1) “Do-Not-Resuscitate (DNR) Form” means the pre-hospital do-not-resuscitate forms developed by the California Emergency Medical Services Authority and by other local emergency medical services agencies. These forms, when properly completed by a client or, in certain instances, a client’s Health Care Surrogate Decision Maker, and by a physician, alert pre-hospital emergency medical services personnel to the client’s wish to forego resuscitative measures in the event of the client’s cardiac or respiratory arrest.
- (e) (Reserved)
- (f) (1) “Facility Hospice Care Waiver” means a waiver, as required by Health and Safety Code section 1507.3, from the limitation on acceptance or retention of clients who have been diagnosed as terminally ill, if that person has obtained the services of a hospice agency certified in accordance with federal Medicare conditions of participation and licensure as defined. This waiver granted by the Department will permit the licensee to accept or retain a designated maximum number of terminally ill clients who are receiving services from a Hospice Agency. The waiver will apply only to those existing or prospective clients who are receiving hospice care in compliance with a Hospice Care Plan meeting the requirements of Section 85075.1.
- (g) (Reserved)
- (h) (1) “Health Care Provider” means that person or persons described in Probate Code Section 4621.

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Section 4621 of the Probate Code states:

“‘Health Care Provider’ means an individual licensed, certified, or otherwise authorized or permitted by the law of this state to provide health care in the ordinary course of business or practice of a profession.”

HANDBOOK ENDS HERE

- (2) “Health Care Surrogate Decision Maker” means an individual who participates in health care decision-making on behalf of an incapacitated client. This individual may be formally appointed (e.g., by the client in an Advance Health Care Directive or by a court in a conservatorship proceeding) or be recognized by virtue of a relationship with the client (e.g., the client’s next of kin). The licensee or any staff member of the facility shall not be appointed by any client to be a Health Care Surrogate Decision Maker.

85001 DEFINITIONS (Continued)**85001**

(3) "Hospice or Hospice Agency" means an entity that provides hospice services to terminally ill persons. This entity is Medicare certified and holds either a Hospice license or a Home Health Agency license from the California Department of Health Services. The definition includes any organization(s), appropriately skilled professional(s), or other professional person(s) or entity(ies) that are subcontracted by the hospice to provide services to the client. The hospice agency providing services in an Adult Residential Facility shall not subcontract with the licensee or any facility staff for the provision of services.

(4) "Hospice Care Plan" means the hospice's written plan of care for a terminally ill client. The hospice shall retain overall responsibility for the development and maintenance of the plan and quality of hospice services delivered.

(i) (1) "Initial Certification Training Program Vendor" means a vendor approved by the Department to provide the initial thirty-five (35) hour certification training program to persons who do not possess a valid adult residential facility administrator certification.

(2) "Initial Vendor Application" means the application form, LIC 9141, used to request approval from the Department to become a vendor for the first time.

(j) (Reserved)

(k) (Reserved)

(l) (1) "Licensed Mental Health Professional" means a licensed clinical psychologist; a psychiatrist; a licensed clinical social worker; or a licensed marriage, family and child counselor.

(m) (Reserved)

(n) (1) "Needs and Services Plan" means a written plan that identifies the specific needs of an individual client, including those items specified in Sections 80068.2 and 85068.2, and delineates those services necessary to meet the client's identified needs.

(o) (Reserved)

(p) (Reserved)

(q) (Reserved)

85001 DEFINITIONS (Continued)**85001**

- (r) (1) "Renewal Vendor Application" means the application form, LIC 9141, used to request approval from the Department to continue another two (2) years as an approved vendor.
- (s) (Reserved)
- (t) (1) "Terminally Ill Client" means a client who has a prognosis by his/her attending physician that the client's life expectancy is six months or less if his/her illness or condition runs its normal course.
- (u) (Reserved)
- (v) (1) "Vendor" means a Department-approved institution, association, individual(s), or other entity that assumes full responsibility or control over a Department-approved Initial Certification Training Program and/or a Continuing Education Training Program.
- (2) "Vendor Applicant" means any institution, association, individual(s) or other entity that submits a request for approval of an Initial Certification Training Program and/or a Continuing Education Training Program.
- (w) (Reserved)
- (x) (Reserved)
- (y) (Reserved)
- (z) (Reserved)

NOTE: Authority cited: Sections 1530 and 1562.3(i), Health and Safety Code. Reference: Sections 1501, 1502.2, 1507, 1507.3, 1531, and 1562.3, Health and Safety Code, and Section 15610.13, Welfare and Institutions Code, and Sections 1800, 4605, and 4753, Probate Code.

85002 DEFINITIONS - FORMS**85002**

The following forms, which are incorporated by reference, apply to the regulations in Title 22, Division 6, Chapter 6 (Adult Residential Facilities).

- | (a) LIC 9139 (2/01) - Renewal of Continuing Education Course Approval, Administrator Certification Program.
- | (b) LIC 9140 (6/01) - Request for Course Approval, Administrator Certification Program.
- | (c) LIC 9141 (5/01) - Vendor Application/Renewal, Administrator Certification Program.
- | (d) LIC 9142a (2/01) - Roster of Participants - For Vendor Use Only - 35/40 Hour Initial Or CEU Courses, Administrator Certification Program.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1530 and 1562.3, Health and Safety Code; and Section 15376, Government Code.

85072 PERSONAL RIGHTS**85072**

- (a) In addition to Section 80072, the following shall apply.
- (b) The licensee shall insure that each client is accorded the following personal rights.
- (1) To visit the facility with his/her relatives or authorized representative prior to admission.
 - (2) To have the facility inform his/her relatives and authorized representative, if any, of activities related to his/her care and supervision, including but not limited to notification of any modifications to the needs and services plan.
 - (3) To have communications to the facility from his/her relatives or authorized representative answered promptly and completely.
 - (4) To have visitors, including advocacy representatives, visit privately during waking hours, provided that such visitations do not infringe upon the rights of other clients.
 - (5) To wear his/her own clothes.
 - (6) To possess and use his/her own personal items, including his/her own toilet articles.
 - (7) To possess and control his/her own cash resources.
 - (8) To have access to individual storage space for his/her private use.
 - (9) To have access to telephones in order to make and receive confidential calls, provided that such calls do not infringe upon the rights of other clients and do not restrict availability of the telephone during emergencies.
 - (A) The licensee shall be permitted to require reimbursement from the client or his/her authorized representative for long distance calls.
 - (B) The licensee shall be permitted to prohibit the making of long distance calls upon documentation that requested reimbursement for previous calls has not been received.

85072 PERSONAL RIGHTS (Continued)**85072**

- (10) To mail and receive unopened correspondence.
- (11) To receive assistance in exercising the right to vote.
- (12) To move from the facility in accordance with the terms of the Admission Agreement.

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

85075 HEALTH-RELATED SERVICES**85075**

- (a) In addition to Section 80075, the following shall apply.
- (b) The facility shall develop and implement a plan which ensures that assistance is provided to the clients in meeting their medical and dental needs.

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

85075.1 HOSPICE CARE**85075.1**

- (a) A licensee shall be permitted to retain terminally ill clients who receive hospice services from a hospice agency or to accept terminally ill persons as clients if they are already receiving hospice services from a hospice agency and would continue to receive those services without disruption after becoming a client, when all of the following conditions (1) through (7) are met:
 - (1) The licensee has received a facility hospice care waiver from the Department.
 - (2) The licensee remains in substantial compliance with the requirements of this section, and those provisions of Chapters 1 and 6, Division 6, of Title 22, California Code of Regulations (CCR), governing Adult Residential Facilities, and with all terms and conditions of the waiver.
 - (3) Hospice services are individually contracted for by each client who is terminally ill or, if the client is incapacitated, by his or her Health Care Surrogate Decision Maker. The licensee shall not contract for hospice services on behalf of an existing or prospective client. The hospice agency must be licensed by the state and certified by the federal Medicare program to provide hospice services.

85075.1 HOSPICE CARE (Continued)**85075.1**

- (4) A written hospice care plan is developed for each existing or prospective terminally ill client by that client's hospice agency. Prior to the initiation of hospice services in the facility for that client, the plan must be agreed upon by the licensee and the client, or the client's Health Care Surrogate Decision Maker, if any. A written request to allow his or her acceptance or retention in the facility while receiving hospice services shall be signed by each existing or prospective client or the existing Health Care Surrogate Decision Maker, if any, and maintained by the licensee in the client's record. All plans must be fully implemented by the licensee and by the hospice agency.

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Health and Safety Code section 1507.3(a) provides in part that:

- (4) The hospice has agreed to design and provide for care, services, and necessary medical intervention related to the terminal illness as necessary to supplement the care and supervision provided by the facility.
- (5) An agreement has been executed between the facility and the hospice regarding the care plan for the terminally ill resident, or the terminally ill person to be accepted as a resident. The care plan shall designate the primary caregiver, identify other caregivers, and outline the tasks the facility is responsible for performing and the approximate frequency with which they shall be performed. The care plan shall specifically limit the facility's role for care and supervision to those tasks authorized for a residential facility under this chapter.

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85075.1 HOSPICE CARE (Continued)**85075.1**

- (5) The acceptance or retention of any terminally ill client in the facility does not represent a threat to the health and safety of any other facility client or results in a violation of the personal rights of any other facility client.
- (6) The hospice and the client agree to provide the licensee with all information necessary to allow the licensee to comply with all regulations and to assure that the client's needs are met.
- (7) The hospice agrees to provide necessary medical intervention related to the client's terminal illness.
 - (A) The medical intervention shall not exceed the care and supervision for a residential facility, as defined in Chapters 1 and 6, Division 6, of Title 22, CCR, governing Adult Residential Facilities.
- (b) A current and complete plan shall be maintained in the facility for each hospice client and include the following:
 - (1) The name, office address, business telephone number, and 24-hour emergency telephone number of the hospice and the client's physician.
 - (2) A description of the services to be provided in the facility by the hospice, including, but not limited to, the type and frequency of services to be provided.
 - (3) The designation of the client's primary contact person at the hospice, and the client's primary and alternate care-giver at the facility.
 - (4) A description of the licensee's responsibility for implementing the plan including, but not limited to, facility staff duties, record keeping, and communication with the hospice, the client's physician, and the client's responsible person, if any. This description shall include the type and frequency of the tasks to be performed by facility staff.
 - (A) The plan shall specify all procedures to be implemented by the licensee regarding the storage and handling of medications or other substances, and the maintenance and use of medical supplies, equipment, or appliances.
 - (B) The plan shall specify, by name or job function, the licensed health care professional on the hospice staff who will control and supervise the storage and administration of all controlled drugs (Schedule II-V, as defined in Health and Safety Code Sections 11055-11058) for the client. Facility staff may assist clients with self-medications without hospice personnel being present.

85075.1 HOSPICE CARE (Continued)**85075.1**

- (C) The plan shall neither require nor recommend that the licensee, or any facility staff, other than a physician or appropriately skilled professional, implement any health care procedure that may legally be provided only by a physician or appropriately skilled professional.
- (5) A description of all hospice services to be provided or arranged in the facility by persons other than the licensee, facility staff, or the hospice. These persons include but are not limited to clergy and the client's family members and friends.
- (6) Identification of the training needed, which staff members need this training, and who will provide the training related to the licensee's responsibilities for implementing the plan.
 - (A) The training shall include, but not be limited to, the needs of hospice patients, such as hydration, infection control, and turning and incontinence care to prevent skin breakdown.
 - (B) The hospice agency will provide training to all staff providing care to terminally ill clients that have obtained hospice services. This training shall be specific to the current and ongoing needs of the individual client receiving hospice care. The training must be completed before hospice care for a client begins in the facility.
- (7) Any other information deemed necessary by the Department, on an individual basis, to ensure that the terminally ill client's needs for health care, personal care, and supervision are met.
- (c) The licensee shall ensure that the plan complies with the requirements of this section and those provisions of Chapters 1 and 6, Division 6, of Title 22, CCR, governing Adult Residential Facilities.
- (d) The licensee shall ensure that the plan is current, accurately matches the services being provided, and that the client's care needs are being met at all times.
- (e) The Department may require that the licensee obtain a revision of the plan if the plan is not fully implemented, or if the Department has determined that the plan should be revised to protect the health and safety of any facility client.
- (f) The licensee shall maintain a record of all hospice-related training provided to the licensee or facility staff for a period of three years.
 - (1) The record of each training session shall specify the names and credentials of the trainer, the persons in attendance, the subject matter covered, and the date and duration of the training session.

85075.1 HOSPICE CARE (Continued)**85075.1**

- (2) The Department shall be entitled to inspect, audit, remove if necessary, and copy the record upon demand during normal business hours.
- (g) In addition to meeting the reporting requirements specified in Sections 80061 and 85061, the licensee shall submit a report to the Department when a client's hospice services are interrupted or discontinued for any reason other than the death of the client. The licensee shall also report any deviation from the client's plan, or other incident, which threatens the health and safety of any client.
- (1) Such reports shall be made by telephone within one working day, and in writing within five working days, and shall specify all of the following:
- (A) The name, age, and gender of each affected client.
- (B) The date and nature of the event and explanatory background information leading up to the event.
- (C) The name and business telephone number of the hospice.
- (D) Actions taken by the licensee and any other parties to resolve the incident and to prevent similar occurrences.
- (h) For each client receiving hospice services, the licensee shall maintain the following in the client's record:
- (1) The client's or the client's Health Care Surrogate Decision Maker's written request for acceptance or retention and hospice services in the facility while receiving hospice services, and his/her advance directive or request regarding resuscitative measures, if any.
- (2) The name, address, telephone number, and 24-hour emergency telephone number of the hospice and the client's Health Care Surrogate Decision Maker, if any, in a manner that is readily available to the client, the licensee, and facility staff.
- (3) A copy of the written certification statement of the client's terminal illness from the medical director of the hospice or the physician in the hospice interdisciplinary group, and the client's attending physician, if any.
- (4) A copy of the client's current plan approved by the licensee, the hospice, and the client or the client's Health Care Surrogate Decision Maker, if the client is incapacitated.

85075.1 HOSPICE CARE (Continued)**85075.1**

- (5) A statement signed by the client's roommate, if any, indicating his or her acknowledgment that the client intends to receive hospice care in the facility for the remainder of the client's life, and the roommate's voluntary agreement to grant access to the shared living space to hospice staff, and the client's family members, friends, clergy, and others.
- (A) If the roommate withdraws the agreement verbally or in writing, the licensee shall make alternative arrangements which fully meet the needs of the hospice client.
- (i) Prescription medications no longer needed shall be disposed of in accordance with Section 80075(o).
- (j) Care for the client's health condition is addressed in the plan.
- (1) No facility staff, other than an appropriately skilled health professional, shall perform any health care procedure that, under law, may only be performed by an appropriately skilled professional.
- (k) The licensee shall maintain a record of dosages of medications that are centrally stored for each client receiving hospice in the facility.
- (l) Clients receiving hospice care, who are bedridden as defined in Section 1566.45 of the Health and Safety Code may reside in the facility provided the licensee shall within 48 hours of the client's admission or retention in the facility, notify the fire authority having jurisdiction over the bedridden client's location of the estimated length of time the client will retain his or her bedridden status in the facility.

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Health and Safety Code section 1566.45(e) provides:

"(e) Notwithstanding the length of stay of a bedridden client, every residential facility admitting or retaining a bedridden client shall, within 48 hours of the client's admission or retention in the facility, notify the fire authority having jurisdiction over the bedridden client's location of the estimated length of time the client will retain his or her bedridden status in the facility."

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- (m) Despite prohibitions to the contrary in Section 80091, clients who have or develop any condition or care requirements relating to naso-gastric and naso-duodenal tubes and Stage 3 and 4 dermal ulcers may be permitted to be accepted or retained in the facility, provided these clients have been diagnosed as terminally ill and are receiving hospice services in accordance with a hospice care plan required in this section and the treatment of such prohibited health conditions is specifically addressed in the hospice care plan. Clients with active, communicable tuberculosis, or any condition or care requirements which would require the facility to be licensed as a health facility as defined by Section 1202 and Section 1250 of the Health and Safety Code remain prohibited from being accepted or retained in the facility.

85075.1 HOSPICE CARE (Continued)**85075.1**

- (n) Clients receiving hospice who also have or develop any restricted health conditions listed in Section 80092, Restricted Health Conditions, may be admitted or retained in the facility without the licensee's requirement to develop and maintain a written Restricted Health Condition Care Plan in accordance with Section 80092.2, provided these clients have been diagnosed as terminally ill and are receiving hospice services in accordance with a hospice care plan required in this section and the treatment of such restricted health conditions is specifically addressed in the hospice care plan.
- (o) Nothing contained in this section precludes the Department from requiring a client to be relocated when the client's needs for care and supervision or health care are not being met in the facility.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1507.3 and 1566.45, Health and Safety Code.

85075.2 FACILITY HOSPICE CARE WAIVER**85075.2**

- (a) In order to accept or retain terminally ill clients and permit them to receive care from hospice, the licensee shall have requested in writing and been granted a Facility Hospice Care Waiver from the Department. The licensee's written request shall include, but not be limited to, the following:
 - (1) The maximum number of terminally ill clients that the facility will care for at any one time.
 - (2) A statement by the licensee or designated representative that this section, and all other requirements within Chapters 1 and 6, Division 6, of Title 22, CCR, governing Adult Residential Facilities, have been read and that the licensee will ensure compliance with these requirements.
 - (3) A statement that the licensee shall comply with the terms and conditions of all plans which are designated as the responsibility of the licensee or under the control of the licensee.
 - (4) A statement that additional care staff will be provided if required by the hospice care plan.
- (b) The Department shall deny a waiver request if the licensee is not in substantial compliance with the provisions of Chapters 1 and 6, Division 6, of Title 22, CCR, governing Adult Residential Facilities.
- (c) The Department shall not approve a waiver request unless the licensee demonstrates the ability to meet the care and supervision needs of clients.
- (d) Any waiver granted by the Department shall include terms and conditions necessary to ensure the well-being of clients receiving hospice care and/or all other clients. These terms and conditions shall include, but not be limited to, the following requirements:
 - (1) A written request shall be signed by each client or the client's Health Care Surrogate Decision Maker, if any, to allow his or her acceptance or retention in the facility while receiving hospice services.

85075.2 FACILITY HOSPICE CARE WAIVER (Continued)**85075.2**

- (A) The request shall be maintained in the client's record at the facility as specified in Section 85075.1(h)(1).
- (2) The licensee shall notify the Department in writing within five working days of the initiation of hospice care services for any terminally ill client. The notice shall include the client's name and date of admission to the facility and the name and address of the hospice agency.
- (e) Within 30 calendar days of receipt of a completed request for a waiver, the Department shall notify the applicant or licensee, in writing, of one of the following:
- (1) The request has been approved or denied.
- (2) The request is deficient, needing additional described information for the request to be acceptable, and a time frame for submitting this information.
- (A) Failure of the applicant or licensee to submit the requested information within the time shall result in denial of the request.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Section 1507.3, Health and Safety Code.

85075.3 ADVANCE DIRECTIVES AND REQUESTS REGARDING RESUSCITATIVE MEASURES**85075.3**

- (a) A client shall be permitted to have an Advance Health Care Directive in the client's file.
- (b) If a client experiences a medical emergency and has an advance directive and/or request regarding resuscitative measures on file, the facility staff shall do one of the following:
- (1) Immediately telephone 9-1-1, present the advance directive and/or request regarding resuscitative measures to the responding emergency medical personnel and identify the client as the person to whom the directive or request refers; or
- (2) Immediately give the advance directive and/or request regarding resuscitative measures to a physician, RN or LVN if he or she is in the client's presence at the time of the emergency and if he or she assumes responsibility; or
- (3) Specifically for a terminally ill client that is receiving hospice services who has completed an advance directive and/or request to forego resuscitative measures, and who is experiencing a life-threatening emergency and is displaying symptoms of impending death directly related to the expected course of the client's terminal illness, the facility may immediately notify the client's hospice agency in lieu of calling emergency response (9-1-1). For emergencies not directly related to the client's terminal illness, the facility staff shall immediately telephone emergency response (9-1-1).

**85075.3 ADVANCE DIRECTIVES AND REQUESTS
REGARDING RESUSCITATIVE MEASURES (Continued)****85075.3**

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Health and Safety Code section 1507.3 states in relevant part:

- "(c) A facility that has obtained a hospice waiver from the Department pursuant to this section, or an Adult Residential Facility for Persons with Special Health Care Needs (ARFPSHN) licensed pursuant to Article 9 (commencing with Section 1567.50), need not call emergency response services at the time of a life-threatening emergency if the hospice agency is notified instead and all of the following conditions are met:
- (1) The resident is receiving hospice services from a licensed hospice agency.
 - (2) The resident has completed an advance directive, as defined in Section 4605 of the Probate Code, requesting to forego resuscitative measures.
 - (3) The facility has documented that facility staff have received training from the hospice agency on the expected course of the resident's illness and the symptoms of impending death."

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NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1507 and 1507.3, Health and Safety Code, and Section 4605, Probate Code.

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85075.4 OBSERVATION OF THE CLIENT**85075.4**

- (a) The licensee shall regularly observe each client for changes in physical, mental, emotional and social functioning.

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- (1) Documentation of such observation shall not be required.

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- (b) The licensee shall provide assistance when observation reveals needs which might require a change in the existing level of service, or possible discharge or transfer to another type of facility.
- (c) The licensee shall bring observed changes, including but not limited to unusual weight gains or losses, or deterioration of health condition, to the attention of the client's physician and authorized representative, if any.
- (d) A client suspected of having a contagious or infectious disease shall be isolated and a physician contacted to determine suitability of the client's retention in the facility.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1507, 1507.3, 1521 and 1531, Health and Safety Code.

85076 FOOD SERVICE**85076**

- (a) In addition to Section 80076, the following shall apply.
- (b) The licensee shall meet the food service personnel requirements specified in Section 85065(e).
- (c) The following requirements shall be met when serving food:
- (1) Meals served on the premises shall be served in one or more dining rooms or similar areas in which the furniture, fixtures and equipment necessary for meal service are provided.
- (A) Such dining areas shall be located near the kitchen so that food may be served quickly and easily.
- (2) Tray service shall be provided in case of temporary need.

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