

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM # 1 Adult Residential Facility Age Regulations

CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held April 15, 2009, as follows:

April 15, 2009
Office Building # 8
744 P St. Room 105
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on April 15, 2009.

CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

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CHAPTERS

Title 22, Division 6, Chapter 1 (General Licensing Requirements), Section 80001 (Definitions); and Chapter 6 (Adult Residential Facilities), Section 85002 (Definitions-Forms) and Section 85068.4 (Acceptance and Retention Limitations)

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The proposed regulations implement the Settlement Agreement (“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 proposed in this regulation package.*

In the California Code of Regulations (CCR), Title 22, Section 80001(a)(5), an ARF is defined as “any facility of any capacity which provides 24-hour a day nonmedical care and supervision to adults except elderly persons.” The CDSS’ Community Care Licensing Division (CCLD) licenses ARFs and other community care facilities. For the purposes of an ARF, an “adult” is considered to be a person 18 years of age through 59 years of age. Residential Care Facilities for the Elderly (RCFEs) constitute a separate licensing facility category, in which varying degrees of care and supervision are provided to persons 60 years of age or older. An RCFE is defined in Health and Safety Code Section 1569.2(l); and in CCR, Title 22, Section 87101(r)(5).

As of January 2, 2009, there were approximately 5,298 licensed ARFs statewide, of which approximately 4,682 have a capacity of six or fewer clients. About half of the ARFs in California serve persons with primarily mental health disabilities and about half serve persons with primarily developmental disabilities. ARFs typically develop programs designed to meet the special mental health and/or developmental needs of their clients.

Under existing regulations, an ARF may *retain* clients over 59 years of age whose needs are compatible with those of other clients if they require the same level of care and supervision as other clients and the licensee is able to meet their needs. An exception is not required to retain a client over 59 years of age as long as the number of such clients does not exceed 50 percent of the census in facilities with a capacity of six or fewer, or 25 percent of the census in facilities with a capacity of over six. However, licensees of ARFs must currently obtain an exception to *admit* persons over 59 years of age. It has always been the CCLD’s practice to consider granting an exception to licensees of ARFs to admit a person over 59 years of age with compatible needs. (An exception is a written authorization by the licensing agency to use alternative means that meet the intent of the regulations and that are based on the unique needs or circumstances of the client for whom the exception is granted, as specified in CCR, Title 22, Section 80001(e)(6).)

In 2005, the ARF licensing regulations were amended to allow licensees of ARFs to *retain* persons over 59 years of age without an exception, as described above (Office of Administrative Law File No. 05-0822-03S). This change incorporated into regulation the CCLD’s standard practice—albeit through the exception process—of allowing existing ARF clients to age in place if certain criteria were met. The issue of amending the regulations to also permit licensees of ARFs to *admit* persons over 59 years of age without an exception was not addressed in that regulation package.

The aforementioned Agreement required the CDSS to adopt the proposed regulations, to be known as the ARF Age Regulations. *As indicated above, the Agreement specifies the actual language to be used in the ARF Age Regulations.* The proposed 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. The proposed regulations will also do the following:

- Change the definition of “Adult Residential Facility” to include “persons 60 years of age or older” if certain requirements are met.
- Require ARF licensees that admit and retain any person 60 years of age or older to include any letters of support and a completed functional capabilities assessment, Needs and Services Plan, and medical assessment in each such person’s file.
- Permit the CDSS to require an ARF licensee to comply with various RCFE regulations if necessary to ensure that a client 60 years of age or older receives appropriate age-related care in the ARF.
- Require that the Needs and Services Plan and the medical assessment of any ARF client 60 years of age or older be updated at least annually; and require the medical assessment to be updated in accordance with the RCFE regulations, to ensure that any age-related health care needs are identified and addressed appropriately in the ARF.
- Keep intact existing regulatory provisions that require an ARF licensee to obtain an exception if accepting or retaining a person 60 years of age or older would result in the number of such persons exceeding 50 percent of the census in facilities with a capacity of six or fewer, or 25 percent of the census in facilities with a capacity over six. The proposed regulations will further require that specified information be included with any such exception request, including any letters of support and the person’s completed functional capabilities assessment, Needs and Services Plan, and medical assessment.

COST ESTIMATE

1. Costs or Savings to State Agencies: No fiscal impact exists because this regulation does not affect any State agency or program.
2. Costs to Local Agencies or School Districts: None
3. Nondiscretionary Costs or Savings to Local Agencies: No fiscal impact exists because this regulation does not affect any State agency or program.

4. Federal Funding to State Agencies: No fiscal impact exists because this regulation does not affect any State agency or program.

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in this order that require reimbursement under the laws of California.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that there is no fiscal impact on small businesses as a result of filing these regulations.

ASSESSMENT OF JOB CREATION OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Section 1530, Health and Safety Code. Subject regulations implement and make specific the Settlement Agreement of October 27, 2008 between the California Association of Mental Health Patients' Rights Advocates and the California Department of Social Services in *California Association of Mental Health Patients' Rights Advocates v. Cliff Allenby, et al.*, Santa Clara County Superior Court, No. 106-CV061397, filed November 9, 2006.

CDSS REPRESENTATIVE REGARDING RULEMAKING PROCESS OF THE PROPOSED REGULATION

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