

## UPDATED INFORMATIVE DIGEST

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.

These regulations were considered as Item #1 at the public hearing held on April 15, 2009 in Sacramento, California. Written testimony was received from the California Association of Mental Health Patients' Rights Advocates (CAMHPRA), Solutions at Santa Barbara (SSB), Casa De Bonita (CDB), and Disability Rights California (DRC) during the 45-day comment period from February 27, 2009 to 5:00 p.m. on April 15, 2009. No oral testimony was presented at the public hearing.

A 15-day renote was not required because there were no changes following the public hearing.