

## UPDATED INFORMATIVE DIGEST

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action clarifies existing regulations and adds regulations to make specific additional requirements for administrator certification and the related educational programs per recently enacted legislation: Assembly Bill (AB) 2675 (Chapter 421, Statutes of 2006); AB 1856 (Chapter 639, Statutes of 2012); AB 663 (Chapter 675, Statutes of 2013); AB 1570 (Chapter 698, Statutes of 2014); and Senate Bill (SB) 911 (Chapter 705, Statutes of 2014).

These statutes require potential residential facility administrators to obtain certification from California Department of Social Services (CDSS) before employment as an administrator and to renew such certification after completing required continuing education. Recent amendments to statute provide for online education, add subject areas to the required "core of knowledge" for each program and expand the initial training hours and exam required of administrators in Residential Care Facilities for the Elderly (RCFEs).

Further, these statutes authorize CDSS to adopt regulations to establish conditions for the certification of administrators and for the approval of vendors of initial and continuing education programs for administrators.

### *Anticipated Benefits of the Proposed Regulation*

The objectives of this rulemaking are to bring the existing regulations into conformity with recent statutory changes as described herein, into consistency across the three program areas [Group Home (GH), Adult Residential Facility (ARF), RCFE] and to make other changes to clarify and strengthen requirements to address problems identified over the history of the program (e.g., cheating on administrator exams, vendor deficiency corrections), thus better protecting the vulnerable populations in these many residential facilities. The anticipated benefits of this rulemaking to the health and welfare of California residents, worker safety, and the state's environment are as follows: The proposal will benefit Californians, including program participants (i.e., facility administrators and training course vendors), by clarifying existing regulations and program processes in accordance with current statutes, thus providing for greater openness and transparency in the government-business interactions of the program. The clarifications should also result in more complete applications received by the Department from administrators and vendors and thus result in more timely processing and conclusions by Department staff [e.g., (non)certifying of administrators, (non)approval of vendors and their training programs]. The action should also result in more timely resolution of problems with training programs (e.g., when identified due to monitoring, changes in courses) and result in more consistent quality of education for facility administrators and thus improved facility worker safety and improved facility resident health and safety, which is the ultimate public purpose of the Administrator Certification Program. There is no specific anticipated benefit to the state's environment.

### ***Forms to be Adopted, Repealed or Amended***

The proposed rulemaking repeals the old versions of forms in Section 85002 as listed:

LIC 9139 (2/01) – Renewal of Continuing Education Course Approval, Administrator Certification Program.

LIC 9140 (6/01) – Request for Course Approval, Administrator Certification Program.

LIC 9141 (5/01) – Vendor Application/Renewal, Administrator Certification Program.

LIC 9142a (2/01) – Roster of Participants – For Vendor Use Only – 35/40-Hour Initial Or CEU Courses, Administrator Certification Program.

The proposed rulemaking incorporates by reference the following amended or new forms in the noted sections below. Incorporated forms are not printed in the CDSS Manual of Policies and Procedures because it would be cumbersome and impractical; however, they are readily available from CDSS, including accessible on line at <http://www.cclcd.ca.gov/pg471.htm>.

Section 84002:

Core of Knowledge Guideline (01/16) – GH 40-Hour Initial Certification.

Section 85002:

Core of Knowledge Guideline (01/16) – ARF 35-Hour Initial Certification.

Section 87102:

LIC 9139 (1/16) - Renewal of Continuing Education Course Approval, Administrator Certification Program.

LIC 9140 (1/16) - Request for Course Approval, Administrator Certification Program.

LIC 9140A (1/16) - Request to Add or Replace Instructor, Administrator Certification Program.

LIC 9141 (1/16) - Vendor Application/Renewal, Administrator Certification Program.

LIC 9142A (1/16) – Roster of Participants - for Vendor Use Only, Administrator Certification Program.

LIC 9142B (1/16) – Roster of Participants – for Exam Proctoring Only, Administrator Certification Program.

LIC 9163 (3/11) – Request for Live Scan Service – Community Care Licensing.

LIC 508 (7/15) Criminal Record Statement.

LIC 9214 (1/16) – Application for Administrator Certification, Administrator Certification Program.

Core of Knowledge Training Standard (1/16) - RCFE 80-Hour Initial Certification replacing the Core of Knowledge Guideline - RCFE 40-Hour Initial Certification Rev. 6/1/01.

### ***Determination of Inconsistency/Incompatible with Existing State Regulations***

The CDSS has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. These are the only regulations that concern Title 22 certification of administrators of CDSS-licensed residential facilities in California.

### ***45-day Public Notice Comment Period***

These regulations were noticed to the public for a minimum of 45-days beginning July 31, 2015, and considered as Item #1 at the public hearing held on September 16, 2015, in Sacramento, California. The public comment period closed at 5:00 p.m. on September 16, 2015. Public comments were received and are addressed in the Final Statement of Reasons and the regulations text was amended as appropriate using double underline and double strikethrough.

### ***15-day Renotice Comment Period***

The complete text of modifications was made available to the interested public for a 15-day renotice from October 7 through October 22, 2015. A few comments were received, but CDSS made no further changes to the proposed regulations. The comments and responses are detailed in the Final Statement of Reasons.

### ***Good Cause for January 1, 2016 Effective Date***

Due to the expected timing of the Office of Administrative Law (OAL) filing this regulations package with the Secretary of State (SOS) for endorsement, the regulations will become effective on April 1, 2016. The regulations need to be effective on January 1, 2016, to be in sync with the statutory effective date and prevent confusion by and between state enforcement and industry advocates, facility administrators and administrator training businesses. Such confusion could negatively impact the vulnerable population served by the administrators because the quality or level of service rendered will have a high potential of not meeting the standards set by statute and expected by facility residents and their advocates.

Government Code section 11343.4 regarding regulations effective date states in part: "(a) Except as otherwise provided in subdivision (b), a regulation or an order of repeal required to be filed with the Secretary of State shall become effective on a quarterly basis as follows: ... (2) April 1 if the regulation or order of repeal is on December 1 to February 29, inclusive. ... (b) The effective dates in subdivision (a) shall not apply in all of the following: ... (3) The agency makes a written request to the office demonstrating good cause for an earlier effective date, in which case the office may prescribe an earlier date...."

The relied upon 2014 bills passed in August 2014 take effect January 1, 2016. Upon their passage the department immediately began internal work on the regulation package culminating in the public notice on July 31, 2015, with further edits made per public comments and a 15-day renotice exercised from October 7 through October 22, 2015. Although a few comments were received during the 15-day renotice, the department did not make any further changes to the proposed regulations. The affected community of administrators, trainers and facility resident advocates are anticipating the updated regulations will take effect January 1, 2016, as was anticipated with enactment of the 2014 legislation. A delay will prevent full implementation of these statutes and the required new training components and expanded exam for RCFE administrators.

Additionally, other previously enacted legislation relied upon [e.g., regarding cultural awareness of Lesbian, Gay, Bisexual, Transgender (LGBT) residents and online learning] is already effective but the current regulations are not yet in alignment with these statutes. The delay in alignment has already caused confusion and delays in implementing the cultural competency requirement in administrator training programs, and the inability of the department to enforce appropriate standards for online training courses. Program stakeholders are anticipating the clarity offered by this rulemaking in aligning the regulations with these other previously enacted bills as well as those of 2014.

Over the past year the department has made good faith efforts to communicate the development, status of and how to participate in the rulemaking process to the program stakeholders (e.g., certified administrators, potential administrators, training vendors and resident advocacy groups) via its Community Care Licensing (CCL) webpage (i.e., posting a quarterly newsletter “The Insider” and draft revised Core of Knowledge charts that incorporate the recent statutory changes) and the use of stakeholder e-mail lists. In addition, CCL has worked with stakeholder groups on specific components of this rulemaking (e.g., Core of Knowledge charts), specifically working with training vendors to include the required new topics in their applicable training programs to use beginning January 1, 2016. Because the department cannot fully enforce these requirements without the details approved in the pending rulemaking, there may be shortcomings and negative impacts to the health and welfare of facility residents (i.e., population served) due to administrator training inconsistencies. Therefore, the department is requesting that the OAL allow an effective date of January 1, 2016, when submitting the approved regulations to the SOS for endorsement.