EVALUATOR MANUAL TRANSMITTAL SHEET

Distribution:	**Transmittal No. 09APX-03**
___ **All Child Care Evaluator Manual Holders** _X_ **All Residential Care Evaluator Manual Holders** ___ **All Evaluator Manual Holders**	**Date Issued** February 2009

Subject:

2008 Chaptered Legislation Appendix A

Residential Care Facilities for the Elderly

Reason For Change:

This transmits summaries of legislation chaptered in 2008 affecting Residential Care Facilities for the Elderly. The summaries are divided into two sections as follows:

1. Immediate Action Required – Interim instructions are provided.
2. Information Only – No action required by the CCLD.

An index is attached to assist staff in locating specific bills. Statutes referenced in this document become effective on January 1, 2009.

Filing Instructions:

Insert the attached pages into Appendix A. Do not remove similar documents from the previous years.

Approved:

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SUMMARY AND IMPLEMENTATION PLANS
2008 CHAPTERED LEGISLATION

RESIDENTIAL CARE FACILITIES
FOR THE ELDERLY

Unless otherwise noted, all new legislation becomes effective on January 1, 2009. When conducting licensing visits, LPAs should, to the extent practical, make sure that providers are aware of any new requirements. However, regardless of whether this information is provided, it is the licensee's responsibility to be aware of any new requirements affecting their program.

ACTION REQUIRED

AB 749 (Wolk), CHAPTER 477, STATUTES OF 2008

Affects: Residential Care Facilities for the Elderly (RCFE)

Subject: Residential Care Facilities for the Elderly: Facility Emergency Plans

Summary: AB 749 added section 1569.695 to the Health and Safety Code.

The requirements of this new law become effective March 1, 2009. Specific to the provisions of this law, no citations may be issued to licensees prior to the effective date of this law. This does not preclude Licensing Program Analysts, (LPAs) from issuing citations related to existing regulations. This new law requires facilities to have an emergency plan on file that includes specific provisions. The Community Care Licensing Division (CCLD) is required to verify during comprehensive licensing visits, that the plan is on file at the facility. In addition to existing regulations which require an RCFE to have a current and operable Emergency Disaster Plan, this law requires RCFEs to include those regulations and procedures as noted on the following page.

Many of these are existing requirements or best practices that are identified in the CCLD Emergency and Disaster Preparedness Self-Assessment Guide. A new form will be created, "Sheltering in Place – Emergency Disaster Plan for Residential Care Facilities for the Elderly", which will supplement the existing LIC 610E Emergency Disaster Plan. This form will identify the new requirements of Health and Safety Code Section 1569.695 to assist licensees in maintaining compliance with this new law.

Implementation:

CCLD is not required to evaluate the requirements of this new law when reviewing applications. However, CCLD will verify during comprehensive visits the plan is on file and will investigate any complaints specific to these new requirements. LPA investigation of complaints related to this law must be done in consultation with the Licensing Program Manager, (LPM). If a violation has occurred, LPAs should use Title 22 regulations and associated regulatory authority. In evaluating facility operations, including emergency and disaster plans, LPAs may use the non-exhaustive guide on the following page to determine if a violation of existing regulations is present. LPAs in consultation with their LPMs may determine that other regulatory sections are more specific to the violation than those listed below and may cite accordingly.

AB 749 (Wolk), Chapter 477, Statutes of 2008	CCLD CITATION AUTHORITY
Health and Safety Code Section 1569.695	Title 22, Division 6 Chapter 8 of the California Code of Regulations, or Health and Safety Code
1569.695(a)(1) Evacuation procedures.	87212(b)(2) Emergency Disaster Plan
1569.695(1)(2) Plans for the facility to be self-reliant for a period of not less than 72 hours immediately following any emergency or disaster, including, but not limited to a long-term power failure.	Neither Health and Safety Code section 1569.695 nor Title 22 Regulations require facilities to “shelter in place”.
1596.695(a)(3) Transportation needs and evacuation procedures to ensure that the facility can communicate with emergency response personnel or can access the information necessary in order to check the emergency routes to be used at the time of an evacuation and relocation necessitated by a disaster.	87212(b)(2)(C) and/or (F) Emergency Disaster Plan 87111(a) Continuation of Licensure Under Emergency Conditions/Sale of Property 87211(a)(2) Reporting Requirements
1569.695(a)(4)(A) Procedures that address provisions of emergency power that could include identification of suppliers of backup generators.	CCLD is not required to evaluate the requirements of this new law when reviewing applications. CCLD will investigate any complaints specific to these new requirements.
1569.695(a)(4)(B) Responding to individual residents’ needs in the event the emergency call buttons are inoperable.	87464(f)(1) Basic Services 87466 Observation of the Resident
1569.695(a)(4)(C) Process for communicating with residents, families, hospice providers, and others, as appropriate that might include landline telephones, cellular telephones, or walkie-talkies.	87212(b)(2) Emergency Disaster Plan
1569.695(a)(4)(D) Assistance with, and administration of, medications.	87464(f)(3) Basic Services
1569.695(a)(4)(E) Storage and preservation of medications.	87309(b) Storage Space 87465(c) Incidental Medical and Dental Care Services
1569.695(a)(4)(F) The operation of assistive medical devices that need electric power for the operation, including, but not limited to, oxygen equipment and wheelchairs.	87464(d) Basic Services

AB 749 (Wolk), Chapter 477, Statutes of 2008	CCLD CITATION AUTHORITY
Health and Safety Code Section 1569.695	Title 22, Division 6 Chapter 8 of the California Code of Regulations, or Health and Safety Code
1569.695(a)(4)(G) A process for identifying residents with special needs, such as hospice, and a plan for meeting those needs.	87212(b)(3) Emergency Disaster Plan
1569.695(b) Each facility shall make the plan available upon request to residents' onsite and available to local emergency responders.	87212(a) Emergency Disaster Plan requires the plan to be in writing, readily available, and subject to review by the Department.

For legislative information related to this new law:
http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_0701-0750/ab_749_bill_20080928_chaptered.pdf

ACTION REQUIRED

AB 978 (Benoit), CHAPTER 291, STATUTES OF 2008

Affects: Foster Family Homes, Group Homes, Small Family Homes, Foster Family Agencies, Certified Family Homes, Transitional Housing Placement Programs, Crisis Nurseries, Adult Residential Facilities, Social Rehabilitation Facilities, Adult Day Programs (All Community Care Facilities), Residential Care Facilities for the Chronically Ill (RCF-CI), Residential Care Facilities for the Elderly (RCFE)

Subject: Immediate Civil Penalties; California Department of Social Services (CDSS) use of civil penalty moneys; unannounced facility visits; Plans of Correction; licensing report requirements

Summary: AB 978 requires the immediate assessment of civil penalties for designated serious violations at community care facilities (CCFs), including Foster Family Homes, RCF-CIs, and RCFEs. AB 978 requires that collected civil penalties be expended by the CDSS exclusively for the technical assistance, training, and education of licensees.

The bill mandates unannounced follow-up visits within 30 days of the effective date of license suspensions, within 30 days of the effective date of revocations, and within 30 days after service of an order for the immediate exclusions of persons from facilities.

The bill requires the CDSS to ensure that a licensee's Plan of Correction (POC) is measurable and verifiable, and to specify in its licensing reports all violations that, if not corrected, will have a direct and immediate risk to clients in care. In addition, the CDSS shall complete all complaint investigations and place a note of final conclusion in the CDSS facility file, regardless of whether the license was surrendered.

This bill specifically addresses the following for community care facilities (CCFs), RCF-CIs, and RCFEs:

1. Authorizes that collected civil penalty fees be deposited into the Technical Assistance Fund and that the CDSS expend civil penalty fees collected from CCFs, RCF-CIs and RCFEs exclusively for the technical assistance, training, and education of licensees.

2. Requires the CDSS to ensure that a licensee's POC is verifiable and measurable and that the POC specify the evidence that is acceptable to establish that a deficiency has been corrected.

3. Requires that licensing reports specify all violations that, if not corrected, will have a direct and immediate risk to the health, safety, or personal rights of clients in care.

4. Requires the CDSS to complete all complaint investigations and place a note of final conclusion in the CDSS's facility file regardless of whether the license was voluntarily surrendered

5. Requires the CDSS to conduct unannounced visits within 30 days after the effective date of a temporary suspension, within 30 days of the effective date of a revocation, or within 30 days after the CDSS serves an order of immediate exclusion.

6. Defines violations warranting immediate civil penalty assessment of $150 per day, per violation until correction is made, as follows:

    a. Fire clearance violations including, but not limited to, overcapacity, ambulatory status, inoperable smoke alarms, and inoperable fire alarm systems with certain exceptions as listed in item 7 below;
    b. Absence of supervision;
    c. Accessible bodies of water;
    d. Accessible firearms or ammunition;
    e. Refused entry of an agent of the CDSS to a facility; and
    f. The presence of an excluded person on the premises.

7. Provides that for fire clearance violations mentioned in number 6 above, civil penalties shall not be assessed under the following specific circumstances: 1) the licensee has initiated eviction proceedings; 2) the licensee has requested the appropriate fire clearance based on ambulatory, nonambulatory or bedridden status and the decision is pending; or 3) the licensee has filed an appeal for a denied bedridden fire clearance (penalties shall not be assessed until the final appeal is decided or 60 days have passed from the date of citation, whichever is earlier).

Implementation:

Modifications to the Evaluator Manual are required to provide direction to Licensing Program Analysts on the above changes. Additionally, certain licensing forms related to civil penalties will be modified. These changes will be clarified in Information Releases scheduled to be published in the Spring of 2009.

Training will be provided to Licensing Program Analysts by the Technical Assistance Bureau.

ACTION REQUIRED

AB 2370 (Bass), CHAPTER 478, STATUTES OF 2008

Affects: Residential Care Facilities for the Elderly (RCFE)

Subject: Residential Care Facilities for the Elderly: Rate Increases

Summary: AB 2370 added Section 1569.658 to the Health and Safety Code, relating to rate increases in RCFEs. This new law requires a licensee of a RCFE to: 1) on or before January 31 of each year, prepare a document disclosing its average monthly rate increases (actual amount and percentage), including rates for living units and service fees, for each of the previous three years; 2) provide written notice of the rate increase history to each resident or resident's representative upon signing an admission agreement and place a confirmation receipt of disclosure signed by the resident or resident's representative in the resident's file; and 3) provide a copy of the most recent rate increase information to any prospective resident or his or her representative.

This new law does not apply to newly licensed RCFEs which have no current residents. Licensed RCFEs operating as part of a Continuing Care Retirement Community (CCRC) are also exempt from this requirement because CCRCs already have extensive disclosure requirements that exceed the requirements of this statute. Newly licensed RCFEs without three years of resident rate increase history are required to disclose the average increase for the years during which the RCFE has been serving residents.

These statutory requirements are effective January 1, 2009.

Implementation: This new law requires Licensing Program Analyst (LPAs) to:

- Investigate complaint allegations related to this rate increase disclosure requirement.

- Verify written copies of disclosures during resident record review process. LPAs are encouraged to request at least one resident record of a newly admitted resident, (admitted post January 31, 2009), to review compliance with this law.

- If violation of law occurs, cite facilities using Health and Safety Code Section 1569.658.

ACTION REQUIRED

AB 3000 (Wolk), CHAPTER 266, STATUTES OF 2008

Affects: Residential Care Facilities for the Elderly, Adult Residential Facilities, Residential Care Facilities for the Chronically Ill, Social Rehabilitation Facilities, Adult Day Programs, Adult Residential Care Facilities with Persons with Special Health Needs Services

Subject: Health care decisions: Life-Sustaining Treatment

Summary: AB 3000 amends Probate Code sections 4780, 4782, 4783, 4784, and 4785. AB 3000 adds Probate Code sections 4781.2, 4781.4, and 4781.5.

Previously, most advanced health care directives focused on "do not resuscitate" orders. The Probate Code refers to "requests to forego resuscitative measures"; this new law amends the Probate Code by redefining the requests as “requests *regarding* resuscitative measures” (italics added). Within this definition is the Physician’s Order for Life-Sustaining Treatment (POLST), which provides more detailed instructions as to when and to what level resuscitative measures should be employed on an individual.

Many advanced health care directives are designed simply to name a decision-maker for the individual if they become incapacitated. The named person then is able to make health care decisions for the other. These forms are often not available to health care providers when the need arises to ensure the patient's wishes are followed. A POLST is a physician’s order that provides greater detailed instruction related to end-of life treatment; e.g., when, where, to what extent, and under what circumstances life-sustaining resuscitative measures should be employed. The POLST form does not supplant Advanced Directives. The resident determines which type of form he/she wishes to use related to end-of life care/treatment decisions.

The POLST is useful because 1) it is an immediately-actionable, signed physician order on a form approved by the Emergency Medical Services Authority; 2) it is an order that addresses a range of life-sustaining interventions as well as an individual’s preferred intensity of treatment of the intervention; and 3) it is a form that is recognized, adopted, and honored across treatment settings.

The POLST is to be completed by a health care provider based on patient preferences and medical indications, and signed by a physician and the patient or the patient’s legally-recognized health care decision maker. A POLST may be executed by the legally-recognized health care decision maker only if the individual lacks capacity. A physician may issue a new POLST if, after consulting with the patient (or his or her legally-recognized health care decision maker), more current information about the patient’s health status and goals of care merit such an issuance. An individual with capacity may request alternative treatment to that specified in his or her POLST at any time.

The California Coalition for Compassionate Care (CCCC) is leading implementation efforts of the POLST in California. The Coalition has developed a POLST form similar to that which is used in the six states that have fully implemented the POLST paradigm.

The California form is on #65 stock paper, bright pink in color for easy identification in the resident's file. Additional information, including a link to download the form, may be found on CCCC's website, www.finalchoices.org.

Implementation: These provisions have an effective date of January 1, 2009.

When a resident of a licensed care facility as referenced in the "Affects" section of the previous page with a POLST form completed by a health care professional (based on the resident's preferences and medical indications) and signed by a physician, facility operators must place it in the resident file. The POLST is a physician's order and should be honored and processed in the same manner as any other physician's order. Note: as of December 15, 2008, there is no approved final version of the POLST form. It is presumed that this form will be present on the CCCC's website in a final version in the near future.

Overview of POLST:

- Signed photocopies and Faxed copies are acceptable, although maintenance of the original POLST in the file is encouraged.
- Any section of the POLST that is incomplete implies full treatment for that section.
- HIPAA allows disclosure of the POLST to other health care professionals when necessary.
- The POLST should follow the resident if he or she is transferred or discharged.

This new law requires providers to:

- Accept and honor client/resident POLST forms.
- Review POLST to understand client/resident wishes.
- Ensure confidentiality of form and information contained in form.
- File client/resident POLST forms in client/resident records.
- As determined necessary, present client/resident POLST form to healthcare professionals, e.g. Emergency Medical Professionals, Physicians, et al.
- Ensure POLST form accompanies client/resident upon discharge from the facility to a different level of care or in cases where emergent services are required.
- Ensure at all times that the client/resident's condition or treatment needs can be met within the scope of licensure.

This new law requires Licensing Program Analysts to:

- Upon request or during a facility visit, provide copies of the Implementation Instructions to the licensee or provide information on how to obtain this information electronically.

- Process complaints related to POLST in consultation with the Licensing Program Manager to determine if a violation of law or regulation exists. Remember POLST is a physician's order.

INFORMATION ONLY - NO ACTION REQUIRED

AB 2100 (Wolk), CHAPTER 481, STATUTES OF 2008

Affects: This bill does not impact CCLD.

Subject: Elder Abuse: Reporting

Summary: The statute created by this bill requires the local ombudsperson and the local law enforcement agency to immediately report known or suspected elder/dependent adult physical, sexual, and financial abuse that occurred in a long-term care facility to the local district attorney's office in the county where the known or suspected abuse occurred.

INFORMATION ONLY – NO ACTION REQUIRED

AB 2327 (Caballero), CHAPTER 361, STATUTES OF 2008

Affects: All Community Care Facilities, Residential Care Facilities for the Elderly, Residential Care Facilities for the Chronically Ill, and Child Day Care Facilities.

Subject: Emergency Services: Humanitarian and Relief Services

Summary: AB 2327 amends section 8596 of the Government Code. This new law affects every state agency. It recognizes that persons fleeing a disaster often lose access to their personal documents and identification, and seeks to ensure that such persons are not prohibited from obtaining disaster-related assistance and services as a result. More specifically, this legislation does the following:

- Requires all state agencies to provide all possible assistance to the Governor and the director of the state Office of Emergency Services in implementing this law.

- Requires public employees "to assist evacuees and other individuals in securing disaster-related assistance and services without eliciting any information or document that is not strictly necessary to determine eligibility under state and federal laws."

- Provides that nothing in this new law shall prevent public employees "from taking reasonable steps to protect the health or safety of evacuees and other individuals during an emergency."

INFORMATION ONLY - NO ACTION REQUIRED

AB 2747 (Berg and Levine), CHAPTER 683, STATUTES OF 2008

Affects: State Department of Public Health's Hospices and Health Facilities

Will affect terminally ill residents in Residential Care Facilities for the Elderly (RCFEs); Adult Residential Facilities (ARFs); and Residential Care Facilities for the Chronically Ill (RCF-CIs)

Subject: End-Of-Life-Care

Summary: AB 2747 will add Part 1.8 (commencing with Section 442) to Division 1 of the Health and Safety Code, relating to end-of-life care. This change is effective January 1, 2009.

AB 2747 requires that when a health care provider makes a diagnosis that a patient has a terminal illness, the health care provider, upon request of the patient, must provide the patient with comprehensive information and counseling regarding legal end-of-life care options, as specified. "Terminal illness" means the individual has a life expectancy of six months or less as stated in writing by his or her attending physician and/or surgeon. "Health care provider" means an attending physician and/or surgeon. It also means a nurse practitioner or physician assistant practicing in accordance with standardized procedures or protocols developed and approved by the supervising physician and surgeon and the nurse practitioner or physician assistant. If the patient's health care provider does not wish to comply with the patient's request for information on end-of-life options, the provider shall: (a) refer or transfer a patient to another health care provider that shall provide the requested information, and (b) provide the patient with information on procedures to transfer to another health care provider that shall provide the requested information. When a terminally ill patient is in a health facility, the health care provider or medical director of the health facility may refer the patient to a hospice provider or private or public agencies and community-based organizations that specialize in end-of-life care case management and consultation to receive comprehensive information and counseling regarding legal end-of-life care options.

If a patient indicates a desire to receive the information and counseling, the comprehensive information shall include, but not be limited to the following:

- Hospice care at home or in a health care setting;
- A prognosis with and without the continuation of disease-targeted treatment;
- The patient's right to refusal of or withdrawal from life-sustaining treatment. This means forgoing treatment or medical procedures that replace or support an essential bodily function, including, but not limited to, cardiopulmonary resuscitation,
- mechanical ventilation, artificial nutrition and hydration, dialysis, and any other treatment or discontinuing

- any of all of those treatments after they have been used for a reasonable time;

- The patient's right to comprehensive pain and symptom management at the end of life, including, but not limited to, adequate pain medication, treatment of nausea, palliative chemotherapy, relief of shortness of breath and fatigue, and other clinical treatments useful when a patient is actively dying;

- The patient's right to give individual health care instruction, pursuant to Section 4670 of the Probate Code, which provides the means by which a patient may provide written health care instruction, such as an advance health care directive, and the patient's right to appoint a legally recognized health care decision maker;

- The information above may, but is not required to be in writing. Health care providers may utilize information from organizations specializing in end-of-life care that provide information on factsheets and Internet Web sites to convey the information;

- The information and counseling sessions may include a discussion of treatment options in a manner that the patient and his or her family can easily understand. If the patient requests information on the costs of treatment options, including the availability of insurance and eligibility of the patient for coverage, the patient shall be referred to the appropriate entity for that information.

AB 2747 may benefit terminally ill patients who request end-of-life information because they would get a timelier referral to hospice care in the earlier stages of their illness. AB 2747 will potentially affect RCFEs, ARFs and RCF-CIs, as hospice care is allowed with a waiver in RCFEs and ARFs, and chronically ill residents residing in RCF-CIs. Additionally, RCFEs, ARFs and RCF-CIs have codes and regulations covering Do-Not-Resuscitate orders.

INFORMATION ONLY - NO ACTION REQUIRED

SB 1058 (Alquist), Chapter 296, Statutes of 2008

Affects: This bill does not impact CCLD.

Subject: Health Facilities: Bacterial Infections

Summary: SB 1058 added Sections 1255.8 and 1288.55 to the Health and Safety Code. It requires health facilities (including skilled nursing facilities) to implement certain procedures for the screening, prevention, and reporting of specified health-facility-acquired infections (HAIs), including infections caused by Methicillin-resistant Staphylococcus aureus (MRSA).