



**Better
Read the
Small Print!**

**An Analysis of
Admission Agreements
in California's Residential
Care Facilities for the Elderly**

Produced by:
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AN ANALYSIS OF ADMISSION AGREEMENTS IN CALIFORNIA'S RESIDENTIAL CARE FACILITIES FOR THE ELDERLY

I. EXECUTIVE SUMMARY

Providers do not always give consumers information sufficient to determine whether a particular assisted living facility can meet their needs, for how long, and under what circumstances. Marketing material, contracts, and other written material provided by facilities are often incomplete and are sometimes vague or misleading..Moreover, while contracts are an important source of information about a facility and its services, only 25 percent of facilities routinely provide their document to prospective residents before they decide to apply for admission. (Assisted Living: Quality-of-Care and Consumer Protection Issues in Four States, U.S. General Accounting Office, April 1999, pp.3-4. Note: One of the four states was California.)

A. INTRODUCTION

In 2002, California Advocates for Nursing Home Reform (CANHR) conducted a comprehensive analysis of a statewide sample of 109 admission agreements currently in use by residential care facilities for the elderly (RCFEs) in California.

Three statewide standard agreements were also analyzed. These “standard” agreements, produced by the State of California’s Community Care Licensing (CCL) and two provider associations, California Center for Assisted Living (CCAL) and Community Residential Care Association of California (CRCAC), are used by thousands of residential care facilities as models for their admission agreements.

The agreements were evaluated by criteria based on law and regulations and consumer principles of full disclosure. The objectives of the study were to:

1. Evaluate admission agreements to determine whether they meet current statutory, regulatory and policy requirements;
2. Evaluate admission agreements to determine whether they meet more comprehensive criteria for consumer fairness, protection and full disclosure; and
3. Based on the evaluations, make policy and legislative recommendations.

There are currently over 6,300 licensed Residential Care Facilities for the Elderly (RCFEs) in California. These facilities, often referred to as Board and Care or Assisted Living Facilities, are homes to over 145,000 residents. The admission agreement used in Residential Care Facilities for the Elderly is the primary legal document governing the relationship between the consumer and the providers of care. The admission agreement is the most basic source of information about the residents’ legal rights and providers’ responsibilities.

Unlike other consumer contracts, the admission agreement is usually entered into at a time of crisis with limited time to shop for comparisons or to negotiate the best service and price combination. The pressures of deciding placement at such a time, coupled with physical and/or mental infirmities, financial limitations and/or lack of knowledge about long-term care options make consumers vulnerable and dependent on full disclosure by facilities.

The majority of RCFE agreements are standardized form contracts written by facility attorneys with residents having limited or no opportunity to change or negotiate terms—a “take-it or leave it” approach that limits consumer choice. Legalistic contract language, poorly organized agreements and small fonts make some documents difficult to read or understand. Despite these problems, there are few protections for California RCFE consumers: no minimum requirement for font size and clear language; no limit on pre-admission fees; no rights of residents to appeal a rate increase; no refund policy; no bed hold policy; no right to administrative appeal for eviction; and no prohibitions against binding arbitration. Indeed, there are currently no statutory protections in California that govern RCFE admission agreements.

“Indeed, there are currently no statutory protections in California that govern RCFE admission agreements.”

B. PRINCIPAL FINDINGS

This report analyzes eight major areas of the admission agreements: Pre-Admission (Upfront) Fees; Services, Costs and Rate Increases; Refunds; Residents’ Rights; Eviction Procedures; Financial Responsibility; Waiver of Facility Responsibility; and Other Conditions, including format and readability issues. For each major area, the legal or regulatory requirements are stated, and findings based on the analysis of the 109 agreements and three statewide standard agreements are summarized and analyzed. Specific recommendations are also presented.

Compliance Grades in Meeting Overall Legal Requirements:

| Type of Agreement | A | B | C | D | F |
|---|----------|----------|----------|----------|----------|
| 109 Admission Agreements | 0% | 0% | 7% | 29% | 64% |
| Community Care Licensing (CCL) | | | 75% | | |
| CA Center for Assisted Living (CCAL) | | | 71% | | |
| Community Residential Care Assoc. of CA (CRCAC) | | | | | 57% |

The State’s admission agreement guidelines only rate a C in overall compliance with the legal requirements. With the State of California’s own agreement ranking so poorly, it is not surprising that 93% of the 109 agreements evaluated received grades of D (29%) or F (64%) in overall compliance with the legal requirements. The other two statewide standard agreements offered by provider associations to their membership also did not rate well: California Center for Assisted Living (CCAL) received a C for overall compliance, and the Community Residential Care Association of California (CRCAC) agreement failed the overall compliance rating.

None of the 109 agreements included all of the information required by law. In sum, the system has failed California's tens of thousands of prospective residents and the over 145,000 present residents in 6,300+ licensed Residential Care Facilities for the Elderly. Admission agreements omit, distort and misrepresent the minimal legal requirements afforded consumers. Consumers are deprived of their right to accurate information and protection. The need for full disclosure in the admission agreements for RCFEs is an imperative!

C. GENERAL RECOMMENDATIONS

In the admission agreements analyzed, there is a pattern of omitting or misrepresenting important legal or regulatory requirements especially in the residents' rights and eviction areas. This misrepresentation robs consumers of their rights. Such practices are blatantly unfair and consumers of residential care services need basic consumer protections.

Consumers of Residential Care Facilities for the Elderly need legal assurances that the agreements that they are asked to sign are clear, comprehensive and fully abide by the governing laws and regulations. These elderly consumers are more dependent on the good faith of the facility than are typical tenants of a landlord. Therefore, facilities have a great responsibility to prospective and present residents and their families for full and honest disclosure in the admission process and in the admission agreement.

The General Accounting Office's 1999 report on Assisted Living stated: *"To make informed choices among various facility options, consumers need clear and complete information on facility services, costs and policies."*

These general recommendations provide the framework for the report's more detailed recommendations:

- 1. Standard Elements or Standard Agreement:** Legislation needs to be enacted to require a standard admission agreement or, at a minimum, standard elements of an admission agreement that provide clear and complete information for consumers. All Residential Care Facilities for the Elderly should be required to use the standard admission agreement or standard elements.
- 2. Agreement Format:** The admission agreement must be written in clear, coherent, and unambiguous language, using words with common and everyday meanings. It should be printed in 12-point font or larger, and should be appropriately divided with each section captioned.
- 3. Access to Agreement:** Every Residential Care Facility for the Elderly must provide a complete copy of the admission agreement to prospective residents or a resident's representative for review during the admission process at least 48 hours before the agreement is signed.
- 4. Residents' Rights:** The admission agreement must either state the residents' rights or attach a copy of these rights. It must be made clear that other rights might be afforded the resident under other state laws and that the signing of the admission agreement in no way diminishes these other rights.
- 5. Consumer Protections:** The admission agreement should not include unlawful waivers of facility liability for the health and safety or personal property of residents, nor should it include any provision that the facility knows or should know to be deceptive or unlawful under state law.

II. METHODOLOGY

A. SAMPLE

California Advocates for Nursing Home Reform (CANHR) collected RCFE admission agreements from throughout California. Every effort was made to get a wide variety of admission agreements representing different sized facilities from different parts of California. Standard agreements from two of the provider associations and the agreement guidelines provided by Community Care Licensing were also collected for analysis. A total of 200 contracts were initially collected.

After reviewing the 200 agreements, 91 were excluded from the study. Agreements were excluded if the contract was missing a substantial amount of information to make evaluation reliable; if an identical or similar agreement from a licensee or corporation owning multiple facilities had already been selected; or if the agreement too closely resembled the standard CCL agreement guidelines.

The final non-probability, convenience sample consisted of 109 RCFE admission agreements from the counties throughout California. The three (3) statewide standard agreements were evaluated separately.

B. DATA ANALYSIS

An evaluation tool was designed consisting of 65 questions divided into 10 subcategories: Pre-Admission Fees, Services/Costs, Rate Increases, Refunds, Resident Rights, Evictions, Financial Responsibility, Liability, Other, and Readability. Of those 65 questions, 28 were legally required for admission agreements. The evaluation tool requiring “yes” or “no” answers measured the extent of compliance with both legal requirements and consumer fairness principles. Compliance was given a one (1) and non-compliance a zero (0) score. High scores indicate a greater degree of compliance. The data was analyzed using SAS software.

C. EVALUATION CRITERIA

The criteria for evaluating the admission agreements were based on three primary considerations:

- 1. Legal Requirements:** Criteria specifically required by regulation or that have been interpreted by the licensing agency to be essential elements of an admission agreement.
- 2. Related Legal Provisions:** Rights or disclosures that are related to the admission process but not required to be in the admission agreement, e.g., procedures for filing complaints, the right to a court hearing to protest an eviction, and the right to participate in or to form a resident and/or family council.
- 3. Consumer Protections:** Other criteria were added that provide consumers with rights or protections that are related to the admission process or offer information on existing practices that are permitted, e.g., charging of admission or community fees, or first and last month’s rent.
- 4. Readability:** A special section contains criteria to judge the readability of agreements. The readability considerations are reported and analyzed but not factored into the overall rating.

A more detailed discussion of the methodology and a copy of the evaluation tool are included in the full report available from the CANHR office.

III. SPECIFIC FINDINGS AND RECOMMENDATIONS

A. PRE-ADMISSION (UPFRONT) FEES

Policy

Present policy does not prohibit facilities from charging pre-admission fees as long as they are not security deposits, and not used to pay for basic services. Facilities are also permitted to charge first and last month's rent under certain conditions. All fees must be stated in the admission agreement. Charging security or damage deposits is not permitted in RCFEs, nor is charging residents for damages permissible. (*CCR Section 87568, Health & Safety Code Section 1569.651, and DSS Policy Memorandum, Security or Damage Deposits, January 15, 1998.*)

Findings

- 29% of the facilities charged some form of pre-admission fee
- Pre-Admission fees ranged from \$750 to \$3,200

Statewide Standard Agreements:

- The CCL (State) agreement stated no pre-admission charges.
- The CCAL agreement included pre-admission fees (i.e., first and last month's rent with the provision that damages might be taken from last month's rent).
- The CRCAC agreement stated no pre-admission charges.

“First month's Rent, last month's Rent and all applicable nonrefundable fees (i.e. Residency Fee -one time administration fee to pay for admittance paperwork; Pet Fee – one time fee to pay for damage to Apartment caused by pets; Cleaning Fee – one time fee to pay for cleaning of Apartment at exit; Background Investigation Fee – one time fee to pay for credit and health check; Emergency Call Pendant Fee – one time fee for emergency pendant; Furnishings Fee – one time fee) must be paid by Resident prior to occupancy.”*

Recommendations

Security and Damage Deposits:

1. Prohibit any form of security or damage deposit whether refundable or not by enacting legislation that conforms to and supports current licensing policy;
2. Demand that facilities repay in full any resident who has paid a security or damage deposit;

Pre-Admission Fees:

3. Enact legislation setting a cap on non-refundable pre-admission fees and disallowing any other type of upfront fees. Prohibit a pre-admission fee if the person does not become a resident or is on SSI/SSP; and
4. Require full disclosure of all pre-admission fees, including a description of what the fee covers and an itemization of associated costs.

**Note: All RCFE admission agreement quotes are verbatim. Spelling or grammatical errors have not been corrected. There has also been no effort to rewrite or change any statements for clarity.*

B. SERVICES, COSTS AND RATE INCREASES

Policy

Basic services are those services that must be provided in order to obtain and maintain a license to operate a Residential Care Facility for the Elderly. Basic services include, but are not limited to, maintaining a safe environment, providing assistance, care, supervision and observation of residents, offering planned activities, food services, and arranging for transportation to medical or dental care. (CCR, Section 87101(b)(2) and 87590.)

“Owner shall have the right to increase the Rent, the fees for the Negotiated Service Plan, and the cost of any other charges hereunder, at any time, in its sole subjective discretion.”

If listed in the admission agreement, facilities are permitted to charge for any service and to use a variety of systems to make charges, e.g., flat rate, charge for each service, or a combination of the two. In order to raise basic daily rates, a facility must give a 30-day written notice. (Note: The law is 60 days as of January 1, 2003.) There are no other limitations or caps on rate increases. Rates for increased care levels or increases in government benefits (i.e., SSI) can be implemented immediately if such procedures are provided for in the admission agreement. (CCR, Section 87568(c), Health & Safety Code Section 1569.655, and DSS Policy Memorandum, Charging Residents for Basic and Optional Services in RCFEs, May 14, 2001.)

Findings

- 77% of the facilities did not state criteria or procedures to increase services or care levels in the agreement
- 76% presented no criteria or procedures for increasing rates
- 13% did not list the basic requirement of a 30-day written notice for most rate increases, but 69% had provisions for “automatic rate increases” necessitated for level of care changes or government increases in the SSI program amounts
- 97% provided no mechanism for residents to contest proposed rate increases

Statewide Standard Agreements:

- The CCL (State) agreement listed services and costs, but no mention of how services or care levels would be increased. It also stated criteria and notice requirements for rate increases. This agreement also provides for an automatic increase if SSI benefits are increased.
- The CCAL agreement listed services, costs and procedures to increase service or care levels. It also stated criteria and notice requirements for rate increases.
- The CRCAC agreement listed services and costs, but no mention of how services or care levels would be increased. It did not state criteria and notice requirements for rate increases. This agreement also provides for an automatic increase if SSI benefits are increased.
- None of these agreements provided a procedure to contest rate increases.

Recommendations

1. Develop new terminology to better describe required services (e.g., environmental, dietary, personal care, supervision, medication storage and distribution, activities, transportation, etc.) and optional services;
2. Require a listing and clear description of all services that are provided and an accompanying itemization of charges;
3. Require no less than 90 days notice for rate increases;
4. Require a written notice explaining all rate increases, including an itemization of charges;
5. Disallow any “immediate” or “automatic” rate increases for level of care changes (except for annual SSI/SSP cost-of-living), and require a minimum 30-day written notice for level of care rate increases; and
6. Establish a new right for residents to appeal unreasonable rate increases or arbitrary level of care changes.

C. REFUNDS

Policy

The facility must state its refund policy in the admission agreement. Refunds are required if a resident is relocated by the licensing agency—a rare occurrence. Even at the death of the resident, a refund is not necessarily guaranteed if other provisions are stated in the agreement. (*CCR, Sections 87568(h) and 87569(c)(5)(A).*)

“There is no refund shall be given if the resident transferred/relocated/expires without thirty (30) days notice, unless otherwise agreed upon.”

Findings

- 67% of the agreements offered refunds once all of the resident’s personal belongings were removed from the facility
- 53% offered refunds upon the resident’s death
- 22% offered refunds when a resident was hospitalized
- 19% offered refunds when the licensing agency relocated a resident
- 26% of the agreements did not state the conditions for refunds

Statewide Standard Agreements:

- The CCL (State) agreement stated death as the only condition for a refund.
- The CCAL agreement stated a refund policy that was operative under death, hospitalization, removal of belongings and other conditions.
- The CRCAC agreement offered a refund policy with no stated conditions.
- None of the agreements indicated that a refund is required when the licensing agency relocates a resident.

Recommendations

1. Require a refund for death, hospitalization, or rehabilitation when resident’s return is not possible, or if a hospital or rehabilitation stay will be for an extended period.
- 7.

D. RESIDENTS' RIGHTS

Policy

Residents have rights at the time of admission established in regulations: to receive a copy of their rights, be informed of the facility's theft and loss policy and visitors policy, be informed that they do not have to purchase medications or medical equipment from a particular source, be informed of the right to execute an advance health care directive, have access to special telecommunications devices if they have disabilities, and to review Licensing reports about the facility. The resident also has rights to be informed about procedures for filing complaints or grievances and, in facilities licensed for 7 or more, these procedures must be posted. (*CCR, Section 87572, Health & Safety Code, Sections 1569.152-1569.158, 1569.313-1569.314, and 1569.38.*)

“It is the policy of this Facility not to allow caffeinated beverages after 5 pm.”

Findings

- 67% of agreements did not list or reference residents' personal rights
- 72% of agreements did not inform residents of the facility's theft and loss policies
- 18% failed to state the policy for visitors
- 6% required residents to purchase medications or medical equipment from a particular source
- 96% did not inform residents of their rights to execute advance directives
- 96% did not inform residents of the availability of special telecommunications devices
- 93% made no statement in the agreement of procedures for filing complaints or grievances
- 99% did not inform residents of the existence of a resident council or the right to form one
- 97% of the agreements did not notify residents of the availability of licensing reports for review

“Lessor shall have access to Lessee's apartment without Lessee's consent.”

Statewide Standard Agreements:

- The CCL (State) agreement listed only 3 of the 7 residents' rights. It failed to list the right of the resident to execute an advance health care directive or access special telecommunications devices.
- The CCAL agreement listed 5 of the 7 rights.
- The CRCAC agreement listed only 3 of the 7 residents' rights. It failed to list the right of the resident to execute an advance health care directive or access special telecommunications devices.
- None of these agreements state the resident's right to refuse to purchase medications or medical equipment from a particular group or the residents' right to review licensing reports.
- None of these agreements mentioned procedures on how residents can file complaints, nor did they mention the right of the resident and/or family member to participate in a resident or family council or to form one.

Recommendations

Notification of Rights:

1. Require facility to provide the resident or representative the admission agreement for review before signing the agreement;
2. A copy of any applicable residents' rights specified by law or regulation should be an attachment to all admission agreements.
3. Require posting of residents' rights, regardless of the facility size;

“Sexual activity between unmarried residents is not allowed in the facility... Sexual activity between residents and guests is not permitted at any time in this facility.” (House Rules – also basis for eviction.)

Personal Rights:

4. Prohibit any facility from either requiring or requesting that a resident or resident's representative waive any residents' rights, including the right to sue for injuries or losses;
5. Establish the resident's right to refuse to perform services for the facility, except as voluntarily agreed upon by the resident and the facility, and as contained in the resident's plan of care;
6. Reinforce the resident's or resident's representative's right to access all of his/her records and to make copies at a cost not to exceed the community standard;
7. Indicate in all agreements that the rights set forth in the agreement are not intended to diminish rights established in other state laws or regulations;

Rights to File Grievances:

8. State in the admission agreement that the resident has the right to file grievances with the facility, and the right to contact and file complaints with the State Department of Social Services, Community Care Licensing, or the Long Term Care Ombudsman, or both, or any other appropriate agency;
9. Specify in the admission agreement that a copy of the facility's grievance procedure, for resolution of resident complaints about facility practices, will be made available to the resident or his or her legal representative;
10. Protect residents from discrimination or retaliation due to filing a grievance with the facility or filing a complaint with the licensing agency, the Ombudsman Program, law enforcement or any other individual or agency; and
11. Establish the right to exercise residents' rights and be free from interference, coercion, discrimination and reprisal.

E. EVICTION PROCEDURES

Policy

The five legal conditions for eviction must be clearly stated in the admission agreement and cannot be added to or modified. There is a 30-day written notice requirement for eviction. House rules must also be referenced, as well as the licensing agency's authority to relocate residents. Under special circumstances, and only with approval from licensing, there is a 3-day eviction provision. Besides situations of clear emergency, there are very limited circumstances that allow for immediate transfers: urgent relocation for a resident on hospice or when the licensing agency orders the licensee to relocate the resident for prohibited health conditions. (*CCR, Sections 87568, 87589, 87701, 87701.1 and 87701.5, and Health & Safety Code, Section 1569.54.*)

The five (5) legal conditions for eviction that have a 30-day notice requirement are as follows:

- ◆ Failure of the resident to pay the agreed upon rate for basic services within ten (10) days of due date
- ◆ Failure of the resident to comply with state or local law after receiving notice of the alleged violation (e.g., drug use, assault, violation of probation, etc.)
- ◆ Failure of the resident to follow facility policies that are in writing, are stated or referenced in the Admission Agreement, and are for the purpose of making it possible for residents to live together
- ◆ After formal assessment, the facility determines that it can no longer meet the resident's changing care needs
- ◆ The facility changes its purpose

“The Facility may terminate this Agreement at any time, with or without cause, by giving 30 days written notice to you and to our responsible person, if applicable.”

Findings

- 26% do not list the 5 legal conditions for eviction
- 45% modify one or more of the 5 legal conditions for eviction
- 61% state other illegal conditions for eviction
- 17% do not list or reference house policies or rules, even though failure to follow such rules could be a cause for eviction
- 92% do not indicate the licensing agency's authority to relocate residents for prohibited health conditions
- 97% provide no procedures to contest eviction proceedings
- 83% do not state criteria and procedures for internal transfers
- 97% do not indicate the facility's responsibilities for developing a discharge plan when there is an eviction

Statewide Standard Agreements:

- The CCL (State) agreement states the facility's eviction policy and the 5 permitted conditions for eviction.
- The CCAL agreement states the facility's eviction policy and the 5 permitted conditions for eviction. The CCAL agreement modifies the wording of one or more of the five legal requirements. It also adds conditions not allowed by present law and regulation.
- The CRCAC agreement states the facility's eviction policy and the 5 permitted conditions for eviction. The CRCAC agreement adds additional conditions not allowed by present law and regulation.
- All three agreements failed to indicate the authority of the licensing agency to relocate residents.
- Although not required, none of these agreements provide any procedures for appealing the eviction, stating room transfer procedures, or responsibilities of the licensee to assist in discharge planning.
- None of these agreements acknowledge the resident's right to legal action and court hearing to protest an eviction.

“The failure to pay obligates the Guarantor to accept physical custody of the Resident.”

Recommendations

Conditions for Eviction:

1. Require the use of only those conditions for eviction provided for under law or regulations. Do not permit any changes in wording or adding other conditions;
2. Specify what constitutes non-compliance with state or local law;
3. Require that house policies not violate any rights in applicable laws or regulations;
4. Provide guidelines for what constitutes “reasonable policies”. The admission agreement must state the facility’s procedures for changing house policies;

“Any infraction of the house rules could result in a 3-day or 30-day notice to vacate.”

Notice for Eviction:

5. Change the 3-day eviction for good cause to 7 days. Provide guidelines as to what constitutes “good cause”;
6. Disallow any immediate evictions;
7. Require a 30-day written notice to residents or legal representatives prior to room or roommate changes;
8. Expand the requirements for the written notice of eviction to include the following elements: the reason or reasons as specified in the regulations for the transfer or discharge; statements providing specific documentation of the reasons stated for eviction; the effective date of the transfer or discharge; the location to which the resident will be transferred or discharged; right of resident and/or agent or resident’s representative to administrative appeal; acknowledgement of the resident’s right to legal action and court hearing to protest evictions; and the address and telephone number of the local Ombudsman Program;

“Fails to comply with the general policies set forth in the application for admission to the facility. Including crankiness, irritability, and disturbance of other residents.”

Resident Rights in Eviction Process:

9. Require re-assessment and care plan review and revision before issuing a notice of eviction in order to ensure the health, safety and continuing quality of care for the affected resident and other residents;
10. Establish a resident’s right to administrative appeal (i.e., hearing by administrative law judge) of any eviction action, including 7-day emergency notice, 30-day notice or CCL relocation order;
11. Prohibit facilities from retaliating against residents for filing appeals or complaints. Any attempt to evict a resident within 180 days of filing a complaint against the facility should be presumed to be retaliatory; and
12. Provide sufficient preparation and orientation to residents to ensure a safe and orderly transfer or discharge from the facility, and to reduce transfer trauma. For all involuntary discharges or facility closures, the facility must prepare a written discharge plan including securing an appropriate placement. The discharge plan must be submitted to and approved in writing by the licensing agency.

F. FINANCIAL RESPONSIBILITY

Policy

Facilities are prohibited from requiring a disclosure of fund sources. (*CCR, Section 87568(c)(3)(E).*)

Findings

- 15% require disclosure of resident/family fund sources

Statewide Standard Agreements:

- In accordance with law and regulations, the CCL (State), CCAL, and CRCAC agreements do not require financial disclosure of fund sources.

“The RCFE may require a financial disclosure at anytime.”

Recommendations

1. Replace the term “responsible person” with “resident or resident’s representative” as defined in Title 22, Section 72527(d);
2. Prohibit facility from requesting financial history of resident or resident’s family, or representative; and
3. Prohibit guarantor for fee payment other than resident or representative using resident’s funds.

G. WAIVER OF FACILITY RESPONSIBILITY OR RESIDENTS’ RIGHTS

Policy

The law requires the facility to establish a theft and loss program in order to protect residents’ property. Facilities that do not take reasonable efforts to safeguard residents’ property must replace the item or reimburse the resident. Facilities are also clearly responsible for the health and safety of the individual resident, as well as the overall care environment. The law further protects the resident by stating that facilities cannot be less responsible than required by law. Residents already have the right to go to court and to seek arbitration in exercising their legal remedies. (*Health & Safety Code, Sections 1569.152-1569.154; CCR, Sections 87101(c)(2), 87568(g) and 87691(a).*)

Findings

- 65% had one or more statements relieving the facility of some type of responsibility, e.g., personal injury, lost or stolen property, etc.
- 58% waived facility responsibility for lost or stolen property
- 25% waived facility responsibility for personal injury

“Resident hereby agrees to indemnify and hold harmless Management from any liability, loss, or obligation resulting from any such injuries or damages.”

Statewide Standard Agreements:

- The CCL agreement includes no waivers of facility responsibility.
- The CCAL agreement identifies conditions under which the facility is not liable. The CCAL contract also includes a binding arbitration agreement.
- The CRCAC agreement identifies conditions under which the facility is not liable.

Recommendations

1. Prohibit mandatory binding arbitration in admission agreements for Residential Care Facilities for the Elderly; and
2. Prohibit any waivers of facility liability for personal injury, lost or stolen property, or waiver of any rights established by law or regulations.

H. OTHER CONDITIONS

Policy

Although not required by law or regulation, consumers need a way to terminate the agreement. Consumers also need to know what criteria and procedures the facility will use to make changes in the agreement. A bed hold policy is not required in Residential Care Facilities for the Elderly as it is in skilled nursing facilities. In addition, there are no requirements for ensuring that admission agreements are understandable to residents and family members, e.g., length, font size, organization of agreements with headings, and use of plain language.

“Residents with dementia or any of our residents who do not show courtesy to fellow residents or staff will be relocated to another facility.”

Findings

- 34% did not state procedures for the resident to voluntarily terminate the agreement
- 85% did not indicate how changes to the agreement would be made
- 92% did not indicate how changes to the house policies or rules would be made
- 67% had no bed hold provisions
- 29% were printed in less than 12 point font size
- 39% did not use headings or sub-headings

Statewide Standard Agreements:

- The CCL agreement does not address changes to the agreement.
- The CCAL agreement provides for voluntary termination of the agreement by the resident. It also states how changes are to be made in the agreement and provisions for bed hold.
- The CRCAC agreement provides for voluntary termination of the agreement by the resident.
- None of these agreements state how changes are made in house policies or rules.
- The CCL agreement rated the best overall for readability out of the three statewide standard agreements.
- The CCAL agreement rated the poorest for readability out of the three statewide standard agreements. The CCAL agreement was long, 17 pages with 27 pages of attachments, and was primarily comprised of long sentences and legalese.
- The CRCAC agreement was hard to read because it used 11-point font size and did not incorporate headings or sub-headings.

“We reserve the right to reassign rooms without prior notice, should it become necessary.”

Recommendations

1. Require a 30-day written notice to make any changes in the agreement or in any referenced and incorporated documents, including the house policies or rules;
2. Establish a bed hold of up to 30 days, with resident or her/his representative agreeing to pay a per diem rate. The facility should be required to have a written bed hold policy, providing notice within 24 hours of hospitalization and giving up to 48 hours for resident or representative to respond;
3. Require that the admission agreement be written in clear, coherent, and unambiguous language, using words with common and everyday meanings. It should be printed in 12-point font or larger, and be appropriately divided with each section captioned; and
4. Design standard elements of an admission agreement or a standard admission agreement that clearly state all legal requirements, rights and facility obligations. Require all Residential Care Facilities for the Elderly to use these standard elements or the standard admission agreement.

“Residents are not allowed to bring in valuables.”

IV. CONCLUSION

This report is a call for responsible action on the part of providers of residential care and for a commitment to full and fair disclosure in all admission agreements. The criteria used in the analysis can be the source for honest self-evaluation and corrective action. The licensing agency, residential care providers, consumer advocates and consumers can also use the criteria to evaluate the quality and fairness of RCFE admission agreements.

The findings and recommendations in this report provide a framework for policy dialogue and action regarding Residential Care Facilities for the Elderly. New laws must be enacted to increase the rights of residents and expand their protections against misrepresentations in admission agreements.

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