

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

ITEM #1 SB 1896, Requirements for Bedridden Persons in RCFEs

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 July 15, 2009, as follows:

July 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 purpose of the hearing is to receive public testimony, not to engage in debate or discussion. 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 July 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.

CONTACT: Office of Regulations Development  
California Department of Social Services  
744 P Street, MS 8-4-192  
Sacramento, California 95814

TELEPHONE: (916) 657-2586      FACSIMILE: (916) 654-3286  
E-MAIL: [ord@dss.ca.gov](mailto:ord@dss.ca.gov)

## CHAPTERS

Title 22, Division 6, Chapter 8 (Residential Care Facilities for the Elderly), Section 87101 (Definitions), Section 87202 (Fire Clearance), Section 87208 (Plan of Operation), Section 87212 (Emergency Disaster Plan), Section 87455 (Acceptance and Retention Limitations), Section 87508 (Register of Residents), Section 87633 (Hospice Care for Terminally Ill Residents), Section 87705 (Care of Persons with Dementia), and Section 87714 (Care of Bedridden Residents)

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Senate Bill (SB) 1896 (Ortiz), Chapter 817, Statutes of 2000, was enacted into law to allow bedridden persons to be admitted to, and remain in, specified licensed residential care facilities that secure and maintain an appropriate fire clearance. It also revised the definition of "bedridden," and required the California Department of Social Services (CDSS) and the Office of the State Fire Marshal (SFM), in consultation with the California Department of Developmental Services, to develop regulations to clarify fire safety and fire clearance requirements for specified residential care facilities. Those facilities include Residential Care Facilities for the Elderly (RCFEs) and residential care facilities that serve adults, the chronically ill, and children.

These regulations address the care of bedridden persons in RCFEs. SB 1896 provisions relating to RCFEs appear in Health and Safety Code Section 1569.72, which is part of California's RCFE Act. Other regulations addressing the care of bedridden persons in other facility types will be developed at a later date.

Prior to the enactment of SB 1896, existing law prohibited an RCFE from admitting or retaining a bedridden person, other than for a temporary illness or recovery from surgery. Current RCFE regulations pertaining to the care of the bedridden persons are outdated; they still prohibit the admission or retention of a bedridden person in an RCFE except on a temporary basis. However, since 2000, the Department has allowed bedridden persons to be cared for in RCFEs under the authority provided by Health and Safety Code Section 1569.72.

These regulations focus on RCFEs, in part, because of the significant amount of interest shown in 2007 by provider associations and advocacy groups in the statutes, regulations and procedures surrounding the admission and retention of bedridden persons in RCFEs. In response to this interest, the CDSS' Community Care Licensing Division (CCLD) developed an information release, CCL Information Release No. 2007-04, Bedridden Residents, which was issued June 13, 2007. This release provided information on applicable statutes and regulations that are associated with the care of persons who are bedridden. It is a public document, available on the CCLD website, and has been shared with providers, provider associations and advocacy groups.

The Department has not developed regulations for the care of the bedridden in RCFEs to date for several reasons. The Department believed it was prudent to wait until the SFM developed its bedridden regulations. The SFM bedridden regulations became effective on March 16, 2005. The Department was then able to use the SFM regulations as background information to develop its regulation package.

Another issue affecting the development of the CDSS' bedridden regulations was the need to determine the parameters for the definition of "bedridden." Health and Safety Code Section 1596.72(b)(1) provides:

For the purposes of this section, "bedridden" means either requiring assistance in turning and repositioning in bed, or being unable to independently transfer to and from bed, except in facilities with appropriate and sufficient care staff, mechanical devices if necessary, and safety precautions, as determined by the director in regulations.

After much discussion and consideration over a number of years, the Department has concluded that it did not have the expertise to determine what constitutes "appropriate and sufficient care staff" and "necessary mechanical devices." Moreover, the CDSS' interpretation is that the statute does not mandate the CDSS to develop regulations for the purposes of determining that a resident is NOT to be considered bedridden under Health and Safety Code Section 1569.72(b)(1), but rather leaves it to the Department's discretion. Considerations related to this interpretation include:

- CCLD staff are not fire safety experts or healthcare professionals.
- With regard to fire and life safety protections, a determination of a resident's "bedridden" status is best made by local fire units who determine how many RCFE bedridden residents a facility may retain based on a number of factors such as the available resources of the unit, the geographical terrain and time it will take for the local unit to respond to an emergent call, the ability of a resident(s) to self-evacuate, or the ability of the local unit to assist with evacuation of a resident(s) as well as the number of residents involved.

Healthcare professionals are best equipped to determine a resident's bedridden status as medical conditions and associated limitations are identified by healthcare professionals.

- An RCFE licensee is responsible to plan for, coordinate and meet, either directly or through the facilitation of services, each resident's health and safety needs. This includes evaluation of resident needs in the areas of sufficient staffing, mechanical devices and safety precautions.
- Per Health and Safety Code Section 1569.33(d), CCLD is only required to make a site visit to RCFEs every five years except in the event of a complaint or under specified circumstances.

These proposed regulations incorporate direction for the care of the bedridden persons in RCFEs as outlined in CCL Information Release No. 2007-04. While not addressing "appropriate and sufficient care staff, mechanical devices if necessary, and safety precautions" as referenced in Health and Safety Code 1569.72(b)(1) and addressed above, the proposed regulations do address the following: notification requirements; fire-clearance requirements; the need for a care plan for each bedridden resident; training requirements for direct care staff that care for bedridden residents; the need for awake night staff; access to ongoing consultation with health care professionals; and appropriate equipment and devices. The proposed regulations are consistent with the spirit of the federal Olmstead decision which protects the rights of individuals to live in a "home-like," least restrictive environment.

#### COST ESTIMATE

1. Costs or Savings to State Agencies: There is no fiscal impact for CDSS.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500 - 17630: None.
3. Nondiscretionary Costs or Savings to Local Agencies: There is no local assistance impact for CDSS.
4. Federal Funding to State Agencies: There is no impact to CDSS' federal funding.

#### 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 impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

#### 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 1569.30, Health and Safety Code. Subject regulations implement and make specific Sections 1569.1, 1569.2, 1569.31, 1569.312, 1569.54, 1569.62, 1569.625, 1569.72, and 1569.80, Health and Safety Code.

**CDSS REPRESENTATIVE REGARDING RULEMAKING PROCESS OF THE PROPOSED REGULATION**

Contact Person:	Robin Garvey	(916) 657-2586
Backup:	Sandra Ortega	(916) 657-2586