

FINAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Post-hearing Modification:

Section 87101(l)(2)

Specific Purpose:

The specific purpose of this amendment is to adopt a definition of the term "Licensed Professional."

Factual Basis:

This amendment is necessary to define the term "Licensed Professional" for clarity and consistency and as a result of testimony received. This definition is consistent with the existent definition of "Licensed Professional" in the California Code of Regulations, Title 22, Division 6, Chapter 1, General Licensing Requirements, which govern most community care facilities. Current Sections 87101(l)(2) and (3) are renumbered to Sections 87101(l)(3) and (4) respectively for consistency.

Section 87101(n)(3)

Specific Purpose:

The specific purpose of this amendment is to adopt a definition of the term Non-Compliance Conference.

Factual Basis:

This amendment is necessary to define the term Non-Compliance Conference as it is referred to in proposed Section 87702.1(a)(3).

Final Modification:

As a result of testimony received, the definition of the term "Non-Compliance Conference" is amended to clarify that the Department may institute an administrative action against a licensee without a non-compliance conference. The definition is also amended to clarify that the conference may result in a plan of correction.

Section 87101(n)(4) [Renumbered from 870101(n)(3)]

Specific Purpose/Factual Basis:

This section is renumbered to accommodate the adoption of a new Section 87101(n)(3).

Section 87218(a)

Specific Purpose:

The specific purpose of this amendment is to repeal the word ‘verified’.

Factual Basis:

This amendment is necessary to remove confusing language. It is not clear what the term ‘verified’ application means. This amendment is necessary for clarity and ease of use.

Section 87218(a)(14)

Specific Purpose:

The specific purpose of this amendment is to correct a reference error and more accurately describe the documentation requirement when there is a change of licensee.

Factual Basis:

This amendment is necessary to correct the reference to Section 87227(f) as providing information regarding a change in licensee. Change of licensee information is given in Section 87227(k). Also, editorial amendments are made for clarity and consistency.

Section 87561(a)(2)

Specific Purpose:

The specific purpose of this amendment is to allow the licensee to report special incidents by faxing the incident report to the licensing agency. The telegraph is repealed as an optional method of reporting.

Factual Basis:

The use of facsimile is currently a common form of communication used between licensees and the licensing agency. Telegraph communications between licensees and the licensing offices are no longer used.

Section 87575.1(d)

Specific Purpose:

The specific purpose of this amendment is to correct an error in sequencing and a reference error.

Factual Basis:

This amendment is necessary because there were two sections numbered 87575.1(c). The second Section 87475.1(c) is changed to Section 87575.1(d). This amendment also corrects a reference to Section 87575.1(b) as providing procedures for a resident with a medical emergency who has a Request to Forego Resuscitative measures, and/or an Advance Health Care Directive. Procedures for a resident with a medical emergency who has a Request to Forego Resuscitative measures, and/or an Advance Health Care Directive is provided in Section 87575.1(c)(1), (2), or (3). These amendments are necessary for consistency and clarity and ease of use.

Section 87577(a)(3)(E)

Specific Purpose:

The specific purpose of adopting this amendment is to correct an error in measurement requirements for drawer space from eight square feet to eight cubic feet.

Factual Basis:

This amendment is necessary to clarify that eight cubic feet of drawer space must be provided. Square feet are not an appropriate measure of drawer space.

Section 87578(a)

Specific Purpose:

The specific purpose of adopting this amendment is to repeal the requirement to obtain the licensing agency's approval for a resident to use postural supports and the phrase "as specified in Article 6."

Factual Basis:

This amendment is necessary because, given the current budget constraints, the Department has determined that placing these commonly granted exceptions into regulation will not adversely impact current licensing standards. This will eliminate the need for Department staff to process exception requests, allowing staff to concentrate on overseeing the health and safety of residents. Existing regulation provides protection for residents who use postural supports by prohibiting the use of the support as a form of restraint. Also, this amendment is necessary for consistency and ease of use.

Section 87578(a)(2)

Specific Purpose:

The specific purpose of this amendment is to repeal the reference to the approval requirement for postural supports and to correct a grammatical error.

Factual Basis:

This amendment is necessary for consistency and ease of use.

Section 87578(a)(3)

Specific Purpose:

The specific purpose of this amendment is to repeal the reference to the approval requirement for postural supports and to specify where the physician's order for the postural support must be maintained. Also, editorial corrections are being made to the existing regulation.

Factual Basis:

This amendment is necessary to require that specific information, previously essential to obtain licensing approval for the use of postural supports, be maintained in the resident's record. This amendment is necessary for the protection of the health and safety of the resident. Also, editorial corrections are proposed for clarity and consistency.

Section 87578(a)(4)

Specific Purpose:

The specific purpose of this amendment is to repeal the reference to the approval requirement for postural supports and to clearly state the existing requirement to maintain an appropriate fire clearance.

Factual Basis:

This section is necessary to protect the health and safety of residents and for consistency and clarity.

Section 87578(a)(5) (Repealed)

Specific Purpose:

This section is being repealed to remove the language that states the licensing agency has the authority to grant conditional and/or limited approvals to use postural supports.

Factual Basis:

This repeal is necessary for consistency and clarity. This regulation package is repealing the need to obtain approval from the licensing agency to use postural supports. See specific purpose and factual basis for Section 87578(a).

Sections 87578(a)(5) and (a)(5)(A) [Renumbered from Sections 87578(a)(6) and (a)(6)(A)]

Specific Purpose:

The specific purpose of this amendment is to repeal the requirement for prior licensing approval for the use of bed rails that extend half the length of a resident's bed and to renumber Section 87578(a)(6) and the first sentence of Section 87578(a)(6)(A).

Factual Basis:

This amendment is necessary because, given current budget constraints, the Department has determined that placing these commonly granted exceptions into regulation will not adversely impact current licensing standards. This will eliminate the need for Department staff to process exception requests, allowing staff to concentrate on overseeing the health and safety of residents. Existing regulation protects residents by prohibiting the use of bed rails as a form of restraint. Section 87578(a)(6) and the first sentence of Section 87578(a)(6)(A) are renumbered to Sections 87578(a)(5) and (a)(5)(A) to accommodate the repeal of Section 87578(a)(5).

Section 87578(a)(5)(B)

Specific Purpose:

The specific purpose of this amendment is to clarify that bed rails extending the entire length of the bed are allowed only when the need is specified in a current hospice care plan and to renumber the second sentence of Section 87578(a)(6)(A).

Factual Basis:

This amendment is necessary to clarify that residents who are receiving hospice care are allowed use of full bed rails when ordered by the physician. The second sentence of Section 87578(a)(6)(A) is renumbered to Section 87578(a)(5)(B) to accommodate the repeal of Section 87578(a)(5).

Section 87691(f)(2)

Specific Purpose:

The specific purpose of this section is to add a reference to the California Code of Regulations regarding disposal of contaminated needles and to repeal outdated, incorrect information.

Factual Basis:

This section is necessary to accurately reference state requirements for the disposal of contaminated needles for clarity and ease of use.

Section 87691(f)(2)(A) (Handbook)

Specific Purpose:

The specific purpose of adopting this section is to reference current California Code of Regulations, Title 8, regarding the disposal of contaminated needles.

Factual Basis:

This section is necessary for clarity and consistency.

Final Modification:

Handbook Section 87691(f)(2)(A)4.d. is corrected for grammatical purposes.

Section 87701(a)

Specific Purpose/Factual Basis:

This section is amended to add two commas to the existing regulation. This editorial amendment is necessary for clarity and consistency.

Section 87701(a)(1)

Specific Purpose:

The specific purpose of this section is to add the current terminology for dermal ulcers which is pressure sores.

Factual Basis:

This amendment is necessary for consistency and clarity. The terminology "pressure sores" is consistent with that used by the National Library of Medicine and the National Institute of Health.

Section 87701(a)(3)

Specific Purpose:

The specific purpose of this amendment is to remove the use of liquid oxygen from the list of prohibited health conditions.

Factual Basis:

This amendment is necessary to allow persons who use liquid oxygen to be admitted or retained in a Residential Care Facility for the Elderly. The circumstances regarding this are now stated in the proposed amendments to Section 87703, Oxygen Administration – Gas and Liquid.

Section 87701(a)(3) through (6) [Renumbered from Sections 87701(a)(4) through (7)]

Specific Purpose/Factual Basis:

Sections 87701(a)(4) through (7) are renumbered to Sections 87701(a)(3) through (6) for consistency and ease of use since Section 87701(a)(3) is being repealed by these proposed regulations.

Section 87701.1(a)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to delete duplicative language, to add necessary language, and to correct a grammatical error. This amendment is necessary to reword this section for clarity and ease of use.

Section 87701.1(a)(9)

Specific Purpose:

The specific purpose of amending this section is to add the use of a nebulizer to the use of an Intermittent Positive Pressure Breathing (IPPB) machine in the list of restricted health conditions.

Factual Basis:

This amendment is necessary to clarify conditions for the use of a nebulizer. The acceptance of residents who use nebulizers is becoming more common and clarification in regulations has been requested from the field offices. The use of a nebulizer is being added to Section 87704, Restricted Health Conditions by these proposed regulations.

Final Modification:

As a result of testimony received, the term "nebulizer" is repealed. Nebulizer devices are much simpler than are IPPB machines. Unlike IPPB machines, a nebulizer is passive and should not be subject to the same requirements as IPPB machines. Also, this term is being repealed from Section 87704.

Section 87701.1(a)(10)

Specific Purpose:

The specific purpose of this section is to add the current terminology for dermal ulcers which is pressure sores.

Factual Basis:

This amendment is necessary for consistency and clarity. The terminology is consistent with that used by the National Library of Medicine and the National Institute of Health.

Sections 87701.2(Title) and (a) through (d)(1)

Specific Purpose:

The specific purpose of adopting these sections is to add similar language from Title 22, Division 6, Chapter 1 (General Licensing Requirements), Section 80092.1, General Requirements for Restricted Health Conditions, that is applicable to Residential Care Facilities for the Elderly. For example, language referring to a care plan in the general licensing regulations is omitted here because it is not applicable.

Factual Basis:

These sections are necessary because the requirement for prior approval from the Department for licensees to accept or retain a resident with a restricted health condition is removed. These sections specify necessary safeguards, previously required to obtain the Departments approval. They are necessary to protect the health and safety of residents in care.

Section 87701.3 [Renumbered from Section 87701.2]

Specific Purpose/Factual Basis:

This section is renumbered to accommodate the adoption of a new Section 87701.2.

Section 87702(a)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to delete duplicative language, to add the word “Section,” and to add the title to the reference to Section 87701.1. This amendment is necessary for clarity, consistency, and ease of use.

Section 87702(b)(1)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to spell out the abbreviation to Residential Care Facilities for the Elderly (RCFE) and to delete unnecessary words. This amendment is necessary for clarity, consistency and ease of use.

Section 87702(b)(4)(B)

Specific Purpose:

The specific purpose of these amendments is to correct grammatical errors and to remove the term “specific page in the clinical record” and reference to contact information “for the resident at the facility.”

Factual Basis:

These amendments are necessary for clarity and ease of use. The term ‘clinical record’ is not commonly used in Residential Care Facilities for the Elderly and is confusing. The regulations require that this agreement be placed in the residents file only and therefore there is no need for the agreement to include contact information for the resident at the facility.

Section 87702(c)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to make editorial corrections to remove unnecessary language and to add the word “that.” This amendment is necessary for clarity, consistency and ease of use.

Section 87702.1(a) et seq.

Specific Purpose:

The specific purpose of adopting these sections is to require noncompliant licensees to obtain Department approval prior to accepting or retaining a resident with certain allowable health conditions and prior to accepting or retaining a resident who cannot provide all routine care for his/her condition.

Factual Basis:

The requirement for all licensees, who accept residents who cannot provide all routine care for their health condition, to obtain prior Departmental approval has been removed. These sections are necessary to require licensees who have serious compliance problems to continue to obtain prior Departmental approval. These sections are necessary to protect the health and safety of residents.

Final Modification:

Section 87702.1(a) - As a result of testimony received, the term "nebulizer" is repealed. Nebulizer devices are much simpler than are IPPB machines. Unlike IPPB machines, a nebulizer is passive and should not be subject to the same requirements as IPPB machines. Also, this term is being repealed from Section 87704.

Section 87702.1(a)(3) - As a result of testimony received, the term "Non-Compliance Conference" is amended to clarify that the Department may institute an administrative action against a licensee without a non-compliance conference. The term is also amended to specify that for purposes of this section, the conference must have resulted in a plan of correction.

Section 87702.1(a)(4) - As a result of testimony received, this section is amended for clarity by specifying that the notice of deficiency is a notice concerning "direct" care and supervision of a resident with a health condition specified in Section 87701.1 that required correction within 24 hours.

Section 87702.1(b) [Renumbered from Section 87702.1(a)]

Specific Purpose/Factual Basis:

Section 87702.1(a) is renumbered to Section 87702.1(b). This amendment is necessary for consistency in alphabetization.

Section 87702.1(b)(2) [Renumbered from Section 87702.1(a)(2)]

Specific Purpose/Factual Basis:

The specific purpose of these amendments is to correct grammatical errors for clarity and for ease of use. Also, Section 87702.1(b)(2) is renumbered from Section 87702.1(a)(2) for consistency.

Section 87702.1(c) [Renumbered from Section 87702.1(b)]

Specific Purpose/Factual Basis:

Section 87702.1(b) is renumbered to Section 87702.1(c). Also, the cross-reference to Section 87565(c) is changed to Section 87565(d) to correct a reference error. These amendments are necessary for consistency in alphabetization and for ease of use.

Section 87702.1(d) [Renumbered from Section 87702.1(c)]

Specific Purpose/Factual Basis:

Section 87702.1(c) is renumbered to Section 87702.1(d) and the titles are added to the cross-references to Sections 87587 and 87591. These amendments are necessary for consistency in alphabetization and ease of use.

Sections 87702.1(e) and (f) [Renumbered from Section 87702.1(d) and (e)]

Specific Purpose/Factual Basis:

Sections 87702.1(d) and (e) are renumbered to Sections 87702.1(e) and (f) for consistency in alphabetization.

Sections 87703(Title), (a), and (a)(2)

Specific Purpose:

The specific purpose of amending these sections is to add the reference to Section 87702, repeal the requirement to obtain the licensing agency's approval for a resident to use intermittent oxygen administration, and to correct grammatical errors.

Factual Basis:

This amendment is necessary to clarify under what condition approval from the licensing agency is still required and because, given the current budget constraints, the Department has determined that placing these commonly granted exceptions into regulation will not adversely impact current licensing standards. This will eliminate the need for Department staff to process exception requests, allowing staff to concentrate on overseeing the health and safety of residents. Grammatical errors are corrected for clarity and ease of use.

Final Modification:

During OAL's review of the emergency filing and prior to its submittal to the Secretary of State, Section 87703(a) was amended to correct the cross-reference to Section 87702.1(a).

Section 87703(b)

Specific Purpose:

The specific purpose of this amendment is to add the appropriate subsection to Section 87702.1.

Factual Basis:

This amendment is necessary for clarity and ease of use.

Section 87703(b)(3)(E)

Specific Purpose:

The specific purpose of this amendment is to specify that oxygen tanks that are not portable must be secured.

Factual Basis:

This amendment is necessary because tanks that are not secure are potential hazards to residents.

Section 87703(b)(3)(F)

Specific Purpose:

The specific purpose of this amendment is to change the limitation of seven feet for the length of the tubing to a length sufficient to allow movement in the resident's room as long as it does not constitute a hazard.

Factual Basis:

This amendment is necessary to permit residents reasonable freedom of movement while using oxygen. After receiving numerous complaints from licensing field staff about the restriction of the seven-foot tubing standard, the Department has determined that a specific tubing length is no longer required.

Final Modification:

Following the public hearing, this section is amended for grammatical consistency with Sections 87703(b)(3)(A) through (b)(3)(I).

Sections 87703(c) through (c)(2)

Specific Purpose:

The specific purpose of adopting these sections is to specify that the use of liquid oxygen in a facility is allowable for residents who are capable of determining need, operating the equipment, and self-administration. The purpose is also to state that the licensee must obtain approval from the Department prior to acceptance or retention of a person who requires the use of liquid oxygen.

Factual Basis:

These sections are necessary to specify the conditions that must be met for a licensee to accept or retain a person who uses liquid oxygen. These sections are necessary to protect the health and safety of residents in care due to the flammability and potential danger of liquid oxygen use.

Sections 87704(Title) and (a)

Specific Purpose:

The specific purpose of this amendment is to add the reference to Section 87702.1(a) and to add the use of a nebulizer to the requirements for the use of an intermittent positive pressure-breathing (IPPB) machine.

Factual Basis:

This amendment is necessary to clarify under what conditions approval from the licensing agency is still required and to provide appropriate guidelines for the protection of the health and safety of residents in care because the criteria to operate a nebulizer is similar to that to operate an IPPB machine.

Final Modification:

As a result of testimony received, the term "nebulizer" is repealed. Nebulizer devices are much simpler than are IPPB machines. Unlike IPPB machines, a nebulizer is passive and should not be subject to the same requirements as IPPB machines.

Section 87704(a)(2)

Specific Purpose:

The specific purpose of this amendment is to remove the reference to obtaining approval from the Licensing Agency and to further specify that this subsection pertains to the device being operated and cared for by an skilled professional.

Factual Basis:

This amendment is necessary because, given the current budget constraints, the Department has determined that placing these commonly granted exceptions into regulation will not adversely impact current licensing standards. This will eliminate the need for Department staff to process exception requests, allowing staff to concentrate on overseeing the health and safety of residents. Grammatical errors are corrected for clarity and ease of use.

Section 87704(b)

Specific Purpose:

The specific purpose of this amendment is to add the appropriate subsection of Section 87702.1.

Factual Basis:

This amendment is necessary for clarity and ease of use.

Sections 87704(b)(2) and (b)(3)

Specific Purpose:

The specific purpose of this amendment is to remove the term IPPB.

Factual Basis:

This amendment is necessary to expand this section to include the use of a nebulizer.

Final Modification:

See Final Modification for Section 87704 (Title) and (a). The repeal of the term nebulizer does not change the amendments, as the term "IPPB" is already applicable to the section.

Section 87704(b)(4)

Specific Purpose:

The specific purpose of this amendment is to add the specific subsection to the reference to Section 87577.

Factual Basis:

This amendment is necessary for clarity and ease of use.

Section 87704(b)(5)

Specific Purpose:

The specific purpose of this amendment is to remove the term IPPB from “IPPB equipment.”

Factual Basis:

This amendment is necessary to expand this section to include the use of a nebulizer.

Final Modification:

See Final Modification for Section 87704 (Title) and (a). The repeal of the term nebulizer does not change the amendments, as the term "IPPB" is already applicable to the section.

Section 87705(a)

Specific Purpose:

The specific purpose of this amendment is to add the reference to Section 87702.1(a).

Factual Basis:

This amendment is necessary to clarify under what conditions approval from the licensing agency is still required.

Section 87705(a)(2)

Specific Purpose:

The specific purpose of this amendment is to repeal the requirement for approval by the licensing agency.

Factual Basis:

This amendment is necessary because, given the current budget constraints, the Department has determined that placing these commonly granted exceptions into regulation will not adversely impact current licensing standards. This will eliminate the need for Department staff to process exception requests, allowing staff to concentrate on overseeing the health and safety of residents.

Section 87705(b)

Specific Purpose:

The specific purpose of this amendment is to add the appropriate subsection of Section 87702.1.

Factual Basis:

This amendment is necessary for clarity and ease of use.

Section 87705(b)(1)(A)

Specific Purpose:

The specific purpose of this amendment is to remove the reference to the approval by the Licensing Agency and changing the term “this” to “the” professional.

Factual Basis:

This amendment is necessary for consistency and to correct a grammatical error.

Post-hearing Modification:

Section 87705(b)(1)(B)

Specific Purpose/Factual Basis:

As a result of testimony received, this section is amended for clarity and consistency with similar requirements specified in Section 87707(b)(2)(B).

Section 87707(b)

Specific Purpose:

The specific purpose of this amendment is to add the title for Section 87702.1.

Factual Basis:

This amendment is necessary for clarity and ease of use.

Final Modification:

As a result of testimony received, Section 87707(b)(2) is amended to correct a grammatical error.

Section 87707(b)(2)(A)

Specific Purpose:

The specific purpose of this amendment is to repeal the requirement for approval by the licensing agency to accept or retain a person with a catheter and also to repeal the words “supervision and.”

Factual Basis:

This amendment is necessary because, given the current budget constraints, the Department has determined that placing these commonly granted exceptions into regulation will not adversely impact current licensing standards. This will eliminate the need for Department staff to process exception requests, allowing staff to concentrate on overseeing the health and safety of residents. Also, the words “supervision and” are repealed so that the requirement is that the bag may be emptied by facility staff who received “instruction” from an appropriately skilled professional. This amendment is necessary for consistency and clarity.

Section 87707(b)(2)(B)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to replace the word “the” with “an” and to add additional information for clarity and ease of use.

Section 87707(b)(2)(C)

Specific Purpose:

The specific purpose of adding this section is to require that the professional reviews the performance of staff as often as deemed necessary or at least annually.

Factual Basis:

This section is necessary to ensure that staff continues to empty the catheter bag as they are instructed.

Final Modification:

During OAL's review of the emergency filing and prior to its submittal to the Secretary of State, this section was amended for grammatical consistency.

Section 87708(a)(1)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to correct a grammatical error for clarity.

Section 87708(a)(1)(D)

Specific Purpose:

The specific purpose of this amendment is to remove language that requires the incontinent resident to be kept clean and dry.

Factual Basis:

This amendment is necessary to remove redundant language. This requirement is stated in Section 87708(b)(3).

Section 87708(b)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to add the title of the referenced Section 87702.1 for clarity and ease of use.

Section 87708(b)(3)

Specific Purpose:

The specific purpose of this amendment is to require the facility to be free of odors from incontinence.

Factual Basis:

This amendment is necessary for clarity because the detection of odors from incontinence indicate that the resident is not being kept clean and dry.

Section 87708(b)(4)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to correct a grammatical error to remove the "s" form "dysfunctions" for clarity and ease of use.

Section 87708(b)(7)

Specific Purpose:

The specific purpose of this amendment is to require evaluation of the resident's skin where it is exposed to urine and feces.

Factual Basis:

This amendment is necessary to ensure the health and safety of incontinent residents to ensure that skin breakdown which can lead to pressure sores is not occurring.

Sections 87708(b)(8) through (b)(10) [Renumbered from Sections 87708(b)(7) through (9)]

Specific Purpose/Factual Basis:

The specific purpose of this amendment is renumberation for consistency and ease of use.

Section 87709(a)

Specific Purpose:

The specific purpose of this amendment is to add the reference to Section 87702.1(a).

Factual Basis:

This amendment is necessary to clarify under what conditions approval from the licensing agency is still required.

Final Modification:

Following the public hearing this section was amended to add a comma (,) after 87702.1(a).

Section 87709(a)(2)

Specific Purpose:

The specific purpose of this amendment is to repeal the requirement for approval by the licensing agency.

Factual Basis:

This amendment is necessary because, given the current budget constraints, the Department has determined that placing these commonly granted exceptions into regulation will not adversely impact current licensing standards. This will eliminate the need for Department staff to process exception requests, allowing staff to concentrate on overseeing the health and safety of residents.

Section 87709(b)

Specific Purpose:

The specific purpose of this amendment is to add the appropriate subsection of Section 87702.1.

Factual Basis:

This amendment is necessary for clarity and ease of use.

Section 87709(b)(1)

Specific Purpose:

The specific purpose of this amendment is to add “physical therapist” to the persons who can prescribe exercises for contractures and to remove the requirement for supervision of trained facility staff by the skilled professional and to delete the word “exercises.”

Factual Basis:

This amendment is necessary to allow physical therapists to function within their scope of practice. The requirement for trained facility staff to have supervision by a skilled professional is vague and confusing. The word “exercises” is deleted to correct a duplication.

Section 87709(b)(2)

Specific Purpose:

The specific purpose of this section is to add the requirement for specific documentation from the skilled professional before exercises are to be performed by facility staff.

Factual Basis:

This section is necessary to protect the health and safety of residents in care by permitting verification that appropriate instruction has been given to facility staff.

Section 87709(b)(3)

Specific Purpose:

The specific purpose of this section is to require the professional to review staff performance as often as necessary, but at least annually.

Factual Basis:

This section is necessary to protect the health and safety of residents in care by ensuring adequate review of staff performance.

Section 87710(b)

Specific Purpose:

The specific purpose of this amendment is to add the title for Section 87702.1.

Factual Basis:

This amendment is necessary for clarity and ease of use.

Section 87710(b)(4)

Specific Purpose:

The specific purpose of this amendment is to remove reference to the recognized food exchange recommendations contained in a 1986 publication.

Factual Basis:

This amendment is necessary because the 1986 publication referenced contains outdated information.

Final Modification:

During OAL's review of the emergency filing and prior to its submittal to the Secretary of State, it was discovered that the second sentence of this notice regulation section was nonexistent in the California Code of Regulations (CCR) and therefore, the sentence "Substitutions may be made by the facility dietitian." was added.

Following the public hearing, the Department re-evaluated this section and decided to leave the section as it existed in the CCR prior to the emergency filing of these regulations.

Section 87711(b)

Specific Purpose:

The specific purpose of this amendment is to add the title for Section 87702.1.

Factual Basis:

This amendment is necessary for clarity and ease of use.

Section 87713(a)

Specific Purpose:

The specific purpose of this amendment is to add the reference to Section 87702.1(a).

Factual Basis:

This amendment is necessary to clarify under what conditions approval from the licensing agency is still required.

Final Modification:

Following the public hearing this section was amended to add a comma (,) after 87702.1(a).

Section 87713(a)(1)

Specific Purpose:

The specific purpose of this amendment is to repeal the requirement for approval by the licensing agency to accept or retain a person with a healing wound and to repeal the word "medical" from the phrase "appropriately skilled 'medical' professional."

Factual Basis:

This amendment is necessary because, given the current budget constraints, the Department has determined that placing these commonly granted exceptions into regulation will not adversely impact current licensing standards. This will eliminate the need for Department staff to process exception requests, allowing staff to concentrate on overseeing the health and safety of residents. The word "medical" is repealed to have consistent terminology with that used in Sections 87701.2(a)(2), 87703(a)(2), 87704(a)(2), 87705(a)(2), 87709(a)(2), and 87709(b)(1).

Section 87713(a)(2)(A)

Specific Purpose:

The specific purpose of this amendment is to remove the insertion of eye drops following cataract surgery from this section.

Factual Basis:

This amendment is necessary because it is determined that facility staff who routinely administer other medications, including eye drops for other medical reasons, can safely administer eye drops following cataract surgery.

Section 87713(a)(3)

Specific Purpose:

The specific purpose of this amendment is to allow for an appropriately skilled professional to diagnose the stage of a pressure sore (dermal ulcer). The term “pressure sore” is added by these proposed regulations.

Factual Basis:

This amendment is necessary to allow Registered Nurses (RNs), functioning within their scope of practice, to provide a diagnosis. Also, the term “pressure sore” is added to reflect the current terminology for dermal ulcer.

Section 87713(a)(3)(A)

Specific Purpose:

The specific purpose of this amendment split out the requirement for a skilled professional to provide care for the pressure sore (dermal ulcer) from Section 87713(a)(3) into Section 87713(a)(3)(A), to repeal the requirement for approval by the licensing agency, and to add the “e” to the word “care.” Also, the term “pressure sore” is added to reflect the current terminology for dermal ulcer.

Factual Basis:

This amendment is necessary for clarity and ease of use, and to allow a person with a pressure sore (dermal ulcer) to be admitted or retained without the Department’s prior approval. The terminology "pressure sore" is consistent with that used by the National Library of Medicine and the National Institute of Health. This amendment is necessary because, given the current budget constraints, the Department has determined that placing these commonly granted exceptions into regulation will not adversely impact current licensing standards. This will eliminate the need for Department staff to process exception requests, allowing staff to concentrate on overseeing the health and safety of residents.

Section 87713(b)

Specific Purpose:

The specific purpose of this section is to make clear that a skin tear is not considered a healing wound.

Factual Basis:

This amendment is necessary for clarification.

b) Identification of Documents Upon Which Department Is Relying

c) 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.

d) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered 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.

e) Significant Adverse Economic Impact On Business

CDSS has determined 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.

f) Testimony and Response

These regulations were considered as Item #1 at the public hearing held on February 11, 2004 in Sacramento, California. Written testimony was received from the following during the 45-day comment period from December 26, 2003 to 5:00 p.m. February 11, 2004:

- Paul Castle – (Castle)
- Mrs. Linda A. Sroda – (Sroda)
- Heather S. Harrison, California Assisted Living Association – (CALA)
- Jack E. Christy, California Association of Homes and Services for the Aging – (CAHSA)

Oral and written testimony was received at the public hearing from:

- Myesha Jackson, California Advocates for Nursing Home Reform – (CANHR)

The comments received and the Department's responses to those comments follow. At the end of each comment is the name of the commenter in parentheses. General comments follow the specifically identified section comments.

Section 87101(n)(3)

1. Comment:

"The proposed language seems to imply that a non-compliance conference is a condition precedent for the Department to institute an administrative action to revoke licensure. Language in the proposed regulation, or regulation 87342, should be added to clarify that the Department may institute an administrative action against a licensee without first calling a non-compliance conference." (Castle)

Response:

The Department appreciates this comment. The term and definition for "non-compliance conference" is amended to clarify that the Department may institute an administrative action against a licensee without a non-compliance conference.

Section 87561(a)(2)

2. Comment:

"Why does not the Department require licensees to make a phone report within 24 hours, as is required for residential facilities in Regulation 80061(b)? To not have a report made for six days for a serious incident places the health and safety of elderly clients at a higher risk than children and dependent adults who reside in residential care facilities governed by regulation 80061." (Castle)

Response:

The Department appreciates this comment but is not amending the regulations. Current regulation Section 87561(a)(2), already requires the licensee to report occurrences such as epidemics within 24 hours; however, nothing prohibits the licensee from reporting sooner and the licensee is held accountable to take appropriate action. The reporting time is not connected to the time frame in which the licensee is required to respond to the incident. Permitting 24 hours allows the report to include details and action taken. It also allows the licensee to focus on responding to the event before having to divert attention to reporting.

The requirement for a written report is under Section 87561(a)(1) and not within the purview of this regulation package.

3. Comment:

"The Licensee-Administrator should report any out-of-the-ordinary adverse event that transpires immediately. Twenty-four (24) hours for verbal or written notification is too long a period of time. Please seriously consider tightening up the exact amount of time allowed the Licensee to respond and notify the State Agency. Licensees must be held accountable within an (8) hour period of time.

"Recent Fatality in the Town of Yucca Valley, California"

"Actual example of adverse event of not reporting a 'missing resident'

"Immediately upon discovering the resident could not be located. This fatality took place in 2003, in the Town of Yucca Valley, which is located in San Bernardino County. Doing Business as 'Spectrum Care Alzheimer's Facility.' The tragedy involved two newly hired employees (without any orientation or training), who were on duty, and unaware of one resident leaving the premises without any functional alarm system activation. The 911 System was not notified for more than 1.5 hours. Later on in the evening, it was determined the resident had walked to State Highway 62 Twenty-nine Palms Highway, attempted to cross the major highway, was struck and killed by an oncoming vehicle. It is my understanding the CDSS was NOT notified immediately. The Administrator was not at the Facility at time of the incident." (Sroda)

Response:

The Department appreciates this comment but is not amending the regulations. Please see response to Comment #2.

Section 87578(a)

4. Comment:

"Prior to the use of postural supports, there must be informed consent from the resident or the resident's representative in cases when the resident does not have the capacity to act on his/her own behalf. Allowing staff members to use postural supports without the knowledge of the licensing agency can endanger the safety of a resident if they are not used for the benefit of the resident. We suggest changing the last sentence of this section to read:

"Postural supports ordered by a physician and approved in advance by the licensing agency may be used only if all of the following circumstances are met." (CANHR)

Response:

The Department appreciates this comment but is not amending the regulations. The Licensing agency routinely approved exception requests for the use of postural supports. This approval for an exception is based on documentation the licensee submits to the licensing office which includes a written order from the physician. This regulation changed the requirement to maintaining that same documentation at the facility instead of submitting it to the licensing office. The licensing agency will now review the postural support documentation during the facility visit.

Section 87578(a)(2)

5. Comment:

"See previous comment on Section 87578(a)" [Comment #4] "regarding the requirement that the licensing agency approves the use of postural supports. We suggest the following change:

"Approved pPostural supports shall be fastened or tied in a manner that permits quick release by the resident." (CANHR)

Response:

The Department appreciates this comment but is not amending the regulations. Please see response to Comment #4.

Section 87578(a)(3)

6. Comment:

"There will be no order for the licensing agency to verify if the licensing agency is not made aware of the use of postural supports for a resident. See previous comment on Section 87578(a)" [Comment #4] "regarding the requirement that the licensing agency approves the use of postural supports. We suggest that the following change be made to the last sentence of this section:

~~"The licensing agency shall be authorized to require other additional documentation in order to evaluate the request if needed to verify the order shall approve the physician's order for postural supports prior to use."~~ (CANHR)

Response:

The Department appreciates this comment but is not amending the regulations. Please see response to Comment #4. The Department does not have the authority to approve or disapprove any physician's order.

Section 87578(a)(4)

7. Comment:

"See previous comment on section 87578(a)." [Comment #4] "The licensee should have prior approval from the licensing agency before accepting or retaining a resident who is non-ambulatory. We recommend this section be changed to read:

"The licensing agency shall approve the use of postural supports that change the ambulatory status of a resident to non-ambulatory only after the appropriate fire clearance, as required by Section 87220, Fire Clearance has been secured." (CANHR)

Response:

The Department appreciates this comment but is not amending the regulations. Please see response to Comment #4.

Sections 87578(a)(5) and (a)(5)(A)

8. Comment:

"Regulation should provide that the facility has an approved hospice waiver before allowing the use of bed rails. The regulation only states as written that the bed rails are used for hospice care, with no mention of whether the Department has approved of such care." (Castle)

Response:

The Department appreciates this comment but is not amending the regulations. Licensees providing hospice care must comply with Section 87716, Hospice Care for Terminally Ill Residents, which specifies hospice waiver requirements.

Section 87578(a)(5)(A)

9. Comment:

"To avoid the use of a half-length bed rail for restraint purposes rather than for safety purposes, we suggest the following change be made to this section:

"A bed rail that extends from the head half the length of the bed and used only for assistance with mobility shall be allowed only if ordered by a physician." (CANHR)

Response:

The Department appreciates this comment but is not amending the regulations. Section 87578(a) ensures that half bed rails are used for assistance with mobility rather than restricting movement. Section 87578(a)(3) requires a written physician's order

indicating the need for half bed rails to assist with mobility. This written documentation must be maintained at the facility and is subject to review by the licensing agency.

Section 87578(a)(5)(B)

10. Comment:

"Residential Care Facilities for the Elderly do not match the medical model set forth by skilled nursing facilities. Although we believe in allowing residents to choose the least restrictive alternative to nursing care available to them, if there is not licensing approval of full-length bed rails, there is no guarantee that they will be used in the resident's best interest. Until such approval is required, we suggest the following change:

"Bed rails that extend the entire length of the bed are prohibited ~~except for residents who are currently receiving hospice care and have hospice care plan that specifies the need for full bed rails.~~" (CANHR)

Response:

The Department appreciates this comment but is not amending the regulations. Current regulations do prohibit the use of full bedrails. The only exception is when the resident is receiving hospice care and the need for full bedrails is specified in the resident's current hospice care plan. Section 87716, Hospice Care for Terminally Ill Residents includes a requirement that before initiating hospice services the Licensee obtain a hospice waiver which receives Department approval. In addition, each resident's hospice care plan is developed and overseen by the resident's hospice agency.

Section 87701.2(a)(2)

11. Comment:

"Regulation stipulates that training will be provided by a 'licensed professional.' Does 'Licensed Professional' **coincide** with 'Medical Professional'? Title 22 Division 6 Chapter 8, under 8701 Definitions, page 11, California-DSS-Manual-CCI; the term 'licensed professional' is not included in the Definitions. The closest terminology is 'Medical Professional' which is defined as an individual who is licensed or certified in California to perform the necessary medical procedures within his/her scope of practice. This includes, but is not limited to, Medical Doctor (MD), Registered Nurse (RN) and Licensed Vocational Nurse (LVN)." (Sroda)

Response:

The Department appreciates your comment. The definition for a "Licensed Professional" is being added to Section 87101(l) for clarification and consistency with California Code of Regulations, Title 22, Division 6, Chapter 1, General Licensing Requirements, which govern most community care facilities.

Section 87701.2(a)(2)(A)

12. Comment:

"§87701.2(a)(2)(A) states: 'Training shall include hands-on instruction in both general procedures and resident specific procedures.' Does this mean that all training must be in-person with the instructor? There are many excellent training tools (e.g., videos) that provide good general instruction. Will such tools be acceptable in coordination with actual hands-on treatment training?" (CAHSA)

Response:

The Department appreciates your comment. Staff training to meet the resident's specialized care needs must include "in-person" training with the instructor that provides a "hands-on" component. This requirement does not prohibit the use of additional training tools such as videos.

Section 87702.1(a)

13. Comment:

"The regulation does not provide a mechanism for a licensee to know whether by virtue of the listed criteria the licensee is not eligible to provide care to a client with a restricted health condition without a Department approved exception. The Department should provide the licensee with such a notice." (Castle)

Response:

The Department appreciates this comment but is not amending the regulations. Regulation Section 87702.1, General Requirements for Allowable Health Conditions, subsections (a) through (a)(4), specify under what conditions a licensee must obtain an exception to accept or retain a resident with an allowable health condition.

14. Comment:

"Why are only some of the 'allowable health conditions' listed here? Catheters and incontinence care are missing." (CALA)

Response:

The Department appreciates this comment but is not amending the regulations. Only health conditions that previously required an exception from the licensing agency prior to having an appropriately skilled professional provide assistance with care are appropriate for this section. Care specified under Section 87708, Managed Bowl and Bladder Incontinence never required an exception in order for licensees to provide care. Section 87707, Indwelling Urinary Catheter/Catheter Procedure required an exception for the staff to empty the bag that has been eliminated. The requirement for appropriately skilled professionals to change the bag remains unchanged.

Section 87702.1(a)(4)

15. Comment:

"CALA recommends that this section be amended to clarify that an exception for a particular health condition is required only if the deficiency is related to the same health condition." (CALA)

Response:

The Department appreciates your comment. Clarification has been added to Section 87702.1(a)(4) to specify that the notice of deficiency must be issued for a violation of direct care and supervision of a health condition specified in Section 87701.1, Restricted Health Conditions and required correction within twenty-four hours. It was not, however, the intent of this regulation to limit the requirement specified in Section 87702.1(a)(4) to a deficiency related to the same condition.

Section 87702.1(b)

16. Comment:

"Although presumed, the regulation would be clearer if it contained a more explicit requirement that the facility have a detailed care plan that spelled out the facility's duties to provide care and supervision to a client with a restricted health care condition. These duties would be developed by the licensee and health care professional and detail how the facility would provide care and monitor the client's condition, and what conditions the facility needed to watch for and when to contact a medical professional." (Castle)

Response:

The Department appreciates this comment but is not amending the regulations. The concerns raised are addressed in Section 87702.1(c) through (f).

Section 87702.1(b)(2)

17. Comment:

"§87702.1(b)(2) requires: 'The names, address and telephone number of vendors, if any, and all appropriately skilled professionals providing services' to be part of the record of care for each resident. Facilities do not currently keep staff names and phone numbers in resident records. While it may be more manageable to keep such information for vendors in the record of care, the expectation to change all resident care plans to reflect all staff caregivers in each plan is not manageable." (CAHSA)

Response:

The Department appreciates this comment but is not amending the regulations. The amendments to this regulation did not change the requirement for specified information to be maintained in the written record of care. This regulation does not refer to personal information for vendors or for facility staff providing service under their professional license. The requirement is that work related information for vendors and appropriately skilled professionals be maintained in the record of care.

Sections 87703(a) and (a)(2)

18. Comment:

"Although the Department probably does not need to grant an exception, is there any reason why the facility should not notify the Department that it is caring for a client with this restricted health condition? With this notice, the Department's representative's visit to a care home would better in that the representative would know to look for certain restricted health care conditions and to make sure that the facility had the required material and provided the proper care. Without this notice, the representative would have no idea what to expect when making a facility visit.

"Also, the factual basis for the regulation states the Department has DETERMINED that removing the exception requirement would not lessen the protection to the health and safety of clients. The Department does not give any factual support for this position. If such such factual support exists, the Department must cite to what available evidence the Department used to make such a determination, and place that evidence in the rulemaking file." (Castle)

Response:

The Department appreciates this comment but is not amending the regulations. This regulation provides regulatory consistency with requirements for Adult Residential Facilities (Title 22, Division 6, Chapter 6). In General Licensing Requirements Regulations (Title 22, Division 6, Chapter 1), Section 80075, Health Related Services, an exception to provide residents assistance with oxygen administration is not required. As the requirement to obtain an exception for specific situations has been

repealed, Section 87702.1(a) was added to continue the requirement to obtain an exception for licensees under specified conditions. In addition, all targeted and random licensing visits are now comprehensive and include a review of resident's records including documentation for health conditions.

The Department's determination to remove the exception requirement was made after having consulted with health care professionals, care providers and field offices that removing the exception requirement would not lessen the protection to the health and safety of clients.

Section 87703(b)(3)(E)

19. Comment:

"For grammatical purposes we suggest the following change:

"Oxygen tanks that are not portable ~~shall be~~ are secured in a stand or to the wall."
(CANHR)

Response:

The Department appreciates your comment but is not amending the regulations. The term "shall be" is used for consistency with regulatory language used in Sections 87703(b)(3)(A) through (b)(3)(I).

Section 87703(b)(3)(F)

20. Comment:

"Does the Department have any factual support that lengthening the oxygen tube would not create an unreasonable risk to clients?" (Castle)

Response:

Section 87703(b)(3)(F) requires that the length of the oxygen tube not constitute a hazard to the resident or others. The State Department of Health Services regulations for nursing homes do not specify a maximum length for oxygen tubes and currently some nursing facilities have tubes in excess of 20 feet to allow for the residents' mobility.

Section 87703(c)(2)

21. Comment:

"Prior exceptions for liquid oxygen were granted with the same type of supervision guidelines as for regular oxygen. The new regulations do not allow this option. CALA recommends amending this provision to allow liquid oxygen use with appropriately skilled professionals assisting with intermittent administration." (CALA)

Response:

The Department appreciates this comment but is not amending the regulations. There is additional concern regarding liquid oxygen over gas oxygen. Possible complications of liquid oxygen are the storage of containers and possible burns from malfunctioning valves. Prior to the new regulations, liquid oxygen was a prohibited condition under Section 87701, Prohibited Health Conditions.

Section 87704

22. Comment:

"Joining nebulizer and IPPBs creates more stringent rules than are necessary for nebulizer assistance. Nebulizers were not specifically addressed in previous versions of the regulations. Nebulizers are the preferred treatment for certain respiratory conditions, including bronchitis. Nebulizers are preferred over inhalers for confused persons because they are simpler and more effective. It is a passive medication route--the resident breathes while the mask or mouthpiece is there. If the resident doesn't have enough arm strength, trained staff can hold tubing up to a resident's mouth while they breathe in the treatment.

"Caregivers can be taught to assist with this safely. CALA recommends removing nebulizers from this section." (CALA)

Response:

The Department appreciates this comment and is amending the regulations to reflect your recommendation. Nebulizer is removed from this section and the Department will consider addressing the use of a nebulizer in regulations at a later time.

Sections 87704(a) and (a)(2)

23. Comment:

"Has the Respiratory Care Board confirmed that a non-professional can operate these machines, that are within the purview of Respiratory Care Board, without a license?" (Castle)

Response:

This regulation did not change the requirement that specifies if the resident is not mentally and physically capable of operating the equipment and determining his/her need, the IPPB procedure must be done by an appropriately skilled professional. This responsibility has not been delegated. The use of a nebulizer has been deleted from this section. Please also see the response to Comment #22.

Section 87707(b)(2)

24. Comment:

"The factual basis for the regulation cites the need for the change in not requiring a Department approved exception due to the current budget crisis and because the Department normally grants the exceptions. However, the Department does not state how often these exceptions are granted because the Department worked with the licensee to ensure that the licensee had all the documentation and care required. Therefore, although the Department may normally grant exceptions, the change in the exception requirement may mean that licensees may provide care to clients with a restricted health condition and not meet the regulatory requirements in situations where in the past where the Department through the exception process would have caught the error. Thus, the removal of the exception process will lessen the protection to clients."
(Castle)

Response:

The Department appreciates this comment. The Licensing agency routinely approves requests for exceptions for trained staff to empty the bag for a resident with an indwelling catheter. Approval for an exception is based on documentation specified in Section 87701.2, General Requirements for Restricted Health Conditions that the licensee submits to the licensing office. Now, this documentation is maintained at the facility where it is reviewed by the licensing agency during the facility visit. This change in the documentation review process does not diminish protection of the resident's health and safety.

25. Comment:

"For grammatical purposes, we suggest the following change:

"Ensuring that the bag and tubing are changed by an appropriately skilled professional should the resident require assistance." (CANHR)

Response:

The Department appreciates this comment and is amending this regulation to reflect the grammatical correction.

Section 87707(b)(2)(A), (B) and (C)

26. Comment:

"In order to ensure resident safety, catheter procedures should only be performed by appropriately skilled professionals. We recommend the following changes:

"Section 87707(b)(2)(A) – delete

"Section 87707(b)(2)(B) – delete

"Section 87707(b)(2)(C) – delete" (CANHR)

Response:

The Department appreciates this comment but is not amending the regulations. Regulations allow for trained staff to perform minimal, routine assistance for specified health conditions. This assistance could be done by a family member if the resident were living in their own home. This regulation allows trained staff to empty the catheter bag and does not pose a health and safety risk for residents in care.

Section 87707(b)(2)(B)

27. Comment:

"CALA recommends removing the word 'delegated' as it is used inappropriately in this section. This section should more closely mirror Section 87705(b)(1)(A) relating to colostomy/ileostomy care. CALA recommends that 87707(b)(2)(B) read as follows:

"There shall be written documentation by an appropriately skilled professional outlining the instruction of the procedures ~~delegated~~ and the names of the facility staff who have been instructed." (CALA)

Response:

The Department appreciates this comment. Section 87705(b)(1)(A) specifies who may change an ostomy bag. The Department believes your intended reference is to Sections 87705(b)(1)(B) and 87707(b)(2)(B). These sections are being amended for consistency. The term "delegated," meaning to "pass on" or "entrust" expresses the intent of the regulation and is added to Section 87705(b)(1)(B).

28. Comment:

"§87707(b)(2)(B) requires: '. . . and the names of the facility staff who have been instructed.' Will an in-service course description, name and signature of the skilled professional trainer, and employee signatures indicating the completion of the training be sufficient?" (CAHSA)

Response:

The Department appreciates this comment. A document as described in your comment could be considered sufficient. However, as course descriptions are not standardized, the determination will be made on a case by case basis by the local licensing agency.

Section 87707(b)(2)(C)

29. Comment:

"§87707(b)(2)(C) – May an LVN employee be the skilled professional who conducts the annual review and verifies employee competencies related to the general requirements for allowable health conditions satisfy this section too?" (CAHSA)

Response:

The Department appreciates this comment. An employee who holds a valid Licensed Vocational Nurse (LVN) license, and is functioning under that LVN license within the scope of practice, can review staff performance to satisfy this requirement.

Section 87709(a)

30. Comment:

"Should the cross-reference be to Regulation 87701.2 and not to 87702.1?" (Castle)

Response:

The Department appreciates this comment but is not amending the regulations. The correct reference is Section 87702.1(a) which lists health conditions and specifies under what circumstances a licensee must still obtain an exception to provide care for an individual with those health conditions.

Section 87709(a)(2)

31. Comment:

"In addition to the comment to Regulation 87707(b)(2)," [Comment #24] "the Department's allowance for clients with contractures without an exception will probably mean that facilities will care for clients who require TOTAL assistance with

activities of daily living, which is a prohibited condition in Regulation 87701(a)(5). The Department will not be able to review the status of client's contractures to determine if the client's conditions requires assistance with all activities of daily living. This is especially important due to recent legislation that has the Department making fewer visits to facilities, which means that the Department may never see this client to determine if the facility met the licensing requirements." (Castle)

Response:

The Department appreciates this comment but is not amending the regulations. Section 87709(a) allows the licensee to accept a resident only if the contractures do not severely affect functional ability. The licensing agency routinely approves requests for exceptions for individuals with contractures. The approval for an exception is based on documentation the licensee submits to the licensing office which is specified in Section 87701.2, General Requirements for Restricted Health Conditions. Regulations now require this documentation to be maintained at the facility where it is reviewed by the licensing agency at the time of the facility visit. This change in the documentation review process does not diminish protection of the resident's health and safety. Although the frequency of licensing visits for some facilities are lessened, comprehensive targeted visits are being conducted on an annual basis.

Section 87709(b)(1)

32. Comment:

"Therapy exercises prescribed by a medical professional should be performed by skilled professional staff to ensure resident safety. We suggest the following change for this section:

"Ensuring that range of motion or other exercise(s), if prescribed by the physician or physical therapist, are performed by an appropriately skilled professional ~~or by facility staff who receive instruction from an appropriately skilled professional.~~" (CANHR)

Response:

The Department appreciates this comment but is not amending the regulations. Exercises such as range of motion are commonly done by family members when an individual with contractures lives at home and can be safely done by trained staff. In addition, Section 87709(b)(1) also provides for oversight of staff performance by a professional.

Section 87709(b)(3)

33. Comment:

"See comments on Section 87709(b)(1) above." [Comment #32] "If range of motion exercises are only being performed by appropriately skilled professionals, the professional does not have to review the performance of other staff. We recommend the following change:

"Section 87709(b)(3) – delete" (CANHR)

Response:

The Department appreciates this comment but is not amending the regulations. Please see Response to Comment #32.

Section 87713(a)(1)

34. Comment:

"Facilities should not be permitted to accept residents with such compromised health conditions, whether stage one or stage two bedsores, without prior approval from the Department. Given the age of the RCFE population and the fact that these residents are particularly susceptible to skin breakdown, a stage two bed sore can progress rapidly without professional treatment. It is imperative that some checks be put in place prior to acceptance or retention of residents with this condition. Because there is a high risk of infection if a healing wound is not properly treated, care should only be provided by an appropriately skilled professional. We suggest the following changes:

"When care is performed by ~~or under the supervision of~~ an appropriately skilled professional with prior approval from the licensing agency." (CANHR)

Response:

The Department appreciates this comment but is not amending the regulations. The licensing agency routinely approves requests for exceptions for individuals with a stage one or two pressure sore. The approval for an exception is based on documentation the licensee submits to the licensing office. Regulations now require that documentation to be maintained at the facility. The requirement for an appropriately skilled professional to care for a pressure sore remains unchanged. The licensing agency reviews the documentation during the facility visit. This change in the documentation review process does not diminish protection of the resident's health and safety.

35. Comment:

"In addition to the comments in Regulation 87707(b)(2)" [Comment #24] "and Regulation 87709(a)(2)," [Comment #31] "the typical way for the Department to determine if a facility complied with the requirements for the care of clients with pressure ulcers is the hospitalization or death of a client, which requires an incident report from a facility. Without an exception request, or some other notification, the Department will not be able to review the facility's documentation to ensure that the client in fact only has either a stage one or two condition. Furthermore, since the Department is only removing this requirement due to the budget crisis, the Department is assuming that the same level of care will be provided based on the trust of care facilities to comply with licensing requirements. However, since the Department will be making fewer facility visits, the Department's ability to double check facilities to make sure that the requirements are met is severely diminished." (Castle)

Response:

The Department appreciates this comment but is not amending the regulations. Please see Response to Comment #34.

Section 87713(a)(3)

36. Comment:

"Without proper diagnosis by a skilled medical professional, proper assessment and treatment cannot be ensured. We suggest the following change:

"Residents with a stage one or two pressure sore (dermal ulcer) must have the condition diagnosed by a physician ~~appropriately skilled professional~~." (CANHR)

Response:

The Department appreciates this comment but is not amending the regulations. The change in language to "appropriately skilled professional" is to include Nurse Practitioners. The diagnosis of a pressure sore is within the scope of practice for a Nurse Practitioner.

37. Comment:

"Regulation should clarify that a registered nurse who happens to be a facility licensee is not acting within the scope of his or her practice is if this person determines the stage of pressure sore. The licensee when caring for client in his or her licensed care facility is acting as a licensee, and not a nurse." (Castle)

Response:

The Department appreciates this comment but is not amending the regulations. Regulations require a pressure sore be "diagnosed" by the appropriately skilled professional. The diagnosis can only be done by a doctor or a nurse practitioner. It is however, within the scope of practice for a nurse to "stage" the pressure sore. Nothing prohibits a licensee who is also a nurse, from functioning as a nurse under a valid license and within the scope of practice, in his/her own facility.

General Comments

38. Comment:

"Today, the majority of California citizens are not aware of the fact that Residential Care Facilities for Elderly (RCFE), also known as Assisted Living Facilities, are considered non-medical facilities and are not required by law, to provide RN's or LVN's or Certified Nursing Assistants (CNA's) or Physicians on their staff...

"The Residential Care Facilities for the Elderly in the State of California originally was created to administer care to individuals who are identified as not being able to live independently, and who would require some assistance with activities of daily living. California currently Licenses over 6,300 RCFE's. California citizenry who seek RCFE services for a place to live today require a greater amount of nursing care. Prospective residents are being identified as harboring multiple medical illnesses, appearing frailer, and significantly more dependent. At time of admission to an RCFE, many prospective residents are non-ambulatory, which requires a higher level of nursing health care and continuous supervision. In essence, the results are bleak, and unacceptable as RCFE's continue to operate on a very slippery slope. Health care professionals observe an 'Obvious Downward Shifting' of health care employees. The Great State of California Residential Care Facilities for Elderly do not require licensed nurses on the premises 24 hours a day. It scares me, disturbs me greatly, that California RCFE's can so quickly teach common untrained employees that are not Certified Nursing Assistants, to provide nursing care and perform nursing procedures. While reading the Initial Statement of Reasoning, later reading the 22 pages of Amended Sections, it appears to me that the untrained employees will be instructed in all the nursing mechanical procedures by rote. It becomes, the 'See-One-Do-One' approach by repetition and memorization.

"Without Request for Waivers from The Department of Social Services, the Risk of Patient Safety and Quality shifts directly to the Licensee Administrator. The burden becomes heavily weighted for each individual RCFE. Actually, The Bell Tolls Warnings, of disaster down the roadway in the future. What protocols or guidelines are being utilized in RCFE's to ensure a Risk Prevention program that otherwise, could cause liability lawsuits or profound financial loss?

"The major concerns that actively practicing nurses are aware of are Adverse Events. These Adverse Events are defined as occurrences that take place in the health care

setting when an incident takes place with residents, employees, or visitors. The outcome of an adverse event can cause wrongful death situation, injuries or trauma to residents, negligence, inappropriately performed procedures while rendering care to the resident, injuries to visitors on RCFE property and lastly, work-related injuries to RCFE employees. Will the documentation include medical record charting, progress notes be completed by the RCFE Administrator?

"It is unthinkable and an unacceptable decision to eliminate The Safety Net provided by the Department of Social Services in Sacramento, for monitoring and overseeing the care of Incidental Medical Services is being erased.

"How will the RCFE Administrator-Licensee assure that their residents are receiving QUALITY CARE?

"Is the Licensee-Administrator going to guarantee that residents are receiving adequate medical treatments for a higher level of nursing care?

"Will RCFE's continue practicing with utilization of Less Qualified and Lower Paid Individuals?

"Will RCFE's strive to provide acceptable levels of quality patient health care?

"With such a vast assortment (Garden Variety) of Resident levels of health care diagnoses and treatments required, it appears it will continue to be an uphill challenge to deliver the Best Quality Resident Care possible. Struggling RCFE's that elect to accept all levels of health care diagnoses and lean towards being "all things to all people" may be doomed to failure." (Sroda)

Response:

The Department appreciates this comment but is not amending the regulations. Licensees are required to meet the care needs of each resident. Responsibility for care that cannot be done without a license is not allowed to be delegated to unlicensed persons. Residents who need 24 hour nursing care remain prohibited.

Exceptions previously required for specified health conditions allowed facility staff to assist the resident by providing simple routine care that family members would do if the individual lived at home. The approval process for these exceptions was based on documentation the licensee submitted to the licensing office and granting these common exception requests was routine. This documentation is now specified in Section 87701.2, General Requirements for Restricted Health Conditions and required to be maintained at the facility where it is reviewed by the licensing agency during the facility visit. This change in the documentation review process does not diminish protection of the resident's health and safety.

39. Comment:

"The justifications promulgated by DSS to give this regulation emergency status do not constitute an emergency. DSS reasons do not meet the criteria for the extraordinary process of bypassing usual notice and comment procedures for new regulations. As Justice Oliver Wendell Homes observed, process is the essence of democracy. The public affected by these regulations has a right to be informed of the proposed regulations and to have their comments seriously considered *before* the State makes changes to existing practice, even in those situations where there is general agreement about the changes being made." (CAHSA)

Response:

The Department appreciates this comment. Whenever any state department proposes regulation amendments on an emergency basis, they are submitted to the Office of Administrative Law (OAL) for review and approval. It is the responsibility of OAL to decide whether or not the Department has sufficient justification to propose those regulation amendments on an emergency basis.

40. Comment: (written and oral)

"At a time when the regulatory oversight of Residential Care Facilities for the Elderly has been drastically reduced, it is of particular concern that prior approval be given before a facility is permitted to accept and retain residents with certain compromised health conditions. The proposed regulations eliminate any ability of the Department to identify those facilities with high-risk populations; eliminate the ability to analyze who comprises the RCFE population; and endangers the health and safety of current and future RCFE residents.

"CANHR strongly supports the ability of consumers to be able to reside in the least restrictive setting, including RCFEs. However, without more stringent training and staffing requirements, the majority of these facilities are not equipped to deal with many of the health conditions included in these regulations.

"It is not wise to allow facility staff with limited training to perform therapy prescribed by medical professionals for residents with contractures. Nor is it wise to delegate the care of indwelling catheters or healing wounds to such staff. Eliminating exceptions and prior approval may save the Department time and money in the short run, but it places thousands of elderly residents at risk of serious injury or death. These regulatory short-cuts will certainly cost the State far more in the long run." (CANHR)

Response:

The Department appreciates this comment but is not amending the regulations. The licensing agency routinely approves requests for exceptions for individuals with certain health related conditions. The approval for these exceptions is based on documentation the licensee submits to the licensing office. Regulations now require

the documentation to be maintained at the facility. The licensing agency reviews the documentation during the facility visit. This change in the documentation review process does not diminish protection of the resident's health and safety.

Also, requirements that must be addressed in documentation submitted to the licensing agency for consideration before granting an exception are clarified in Section 87701.2, General Requirements for Restricted Health Conditions. In addition, Section 87702.1, General Requirements for Allowable Health Conditions, specifies that under certain conditions licensees still need to obtain an exception before accepting or retaining an individual with an identified health condition.

g) 15-Day Renotice Statement

Pursuant to Government Code Section 11346.8, a 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. No written testimony on the modifications renoticed for public comment from April 10, to April 26, 2004 was received.