
EVALUATOR MANUAL TRANSMITTAL SHEET

<u>Distribution:</u> <input type="checkbox"/> All Child Care Evaluator Manual Holders <input type="checkbox"/> All Residential Care Evaluator Manual Holders <input checked="" type="checkbox"/> All Evaluator Manual Holders	<u>Transmittal No.</u> 12APX-16
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Subject:

Appendix A – 2012 Chaptered Legislation
 Adult Community Care Facilities and Residential Care Facilities for the Chronically Ill.

Reason for Change:

This document transmits summaries of legislation chaptered in 2012 affecting Adult Community Care Facilities and Residential Care Facilities for the Chronically Ill.

Filing Instructions:

INSERT – 2012 Chaptered Legislation into Appendix A, Chaptered Legislation 2012.

Approved:

Original Document Signed by
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12/27/12

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**SUMMARY AND IMPLEMENTATION PLANS
2012 CHAPTERED LEGISLATION**

**ADULT COMMUNITY CARE FACILITIES AND RESIDENTIAL
CARE FACILITIES FOR THE CHRONICALLY ILL**

BILL NUMBER/AUTHOR	SUBJECT	PAGE
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Unless otherwise noted, all new legislation becomes effective on January 1, 2013. When conducting licensing visits, LPAs should, to the extent practical, make sure that providers are aware of any new requirements. However, regardless of whether this information is provided, it is the licensee's responsibility to be aware of any new requirements affecting their program.

ACTION REQUIRED

AB 40 (Yamada), Chapter 659, Statutes of 2012 and SB 1051 (Liu), Chapter 660, Statutes of 2012

Affects: Adult Day Programs (ADPs), Adult Residential Facilities (ARFs), Adult Residential Facilities for Persons with Special Health Care Needs (ARFPSHNs), Residential Care Facilities for the Elderly (RCFEs), Social Rehabilitation Facilities (SRFs)

Note: These bills do not change the reporting requirements regarding dependent adults being served by Residential Care Facilities for the Chronically Ill. Mandated reporters for clients of this facility type would adhere only to the reporting scheme in “3” below.

Subject: Elder and Dependent Adult Abuse – Reporting Requirements

Summary: Assembly Bill (AB) 40 and Senate Bill (SB) 1051 made changes to the elder and dependent abuse reporting statute, which are effective January 1, 2013. These are double jointed bills with SB 1051 as the ruling bill. Accordingly, both bills amended sections 15630 and 15631 of the Welfare and Institutions Code, relating to elder and dependent adult abuse. In addition, AB 40 added section 15610.67 to the Welfare and Institutions Code.

Though these bills do not change the fact that a mandated reporter is responsible to report known or suspected incidents of dependent adult or elder abuse, these bills do create four separate reporting standards (depending on the facts), which mandated abuse reporters are required to follow regarding clients in long-term care facilities.

AB 40 defines the term “serious bodily injury” as an injury involving extreme physical pain, substantial risk of death, or protracted loss or impairment of function of a bodily member, organ, or of mental faculty, or requiring medical intervention, including, but not limited to, hospitalization, surgery, or physical rehabilitation.

The bills divide incidents of suspected elder and dependent adult abuse into four different reporting standards based upon the mandated reporter’s analysis of the facts. In some cases, the bills shorten the previous mandatory reporting timeframes and increase the entities that receive these reports.

For any mandated reporter who, in his or her professional capacity, or within the scope of his or her professional employment, has observed or has knowledge of an incident that reasonably appears to be abuse, or reasonably suspects abuse, the following reporting requirements shall be followed:

- 1) If the suspected or alleged abuse is physical abuse and the abuse occurred in a long-term care facility the following shall occur:
 - a) If the suspected physical abuse results in serious bodily injury:

- i) A telephone report shall be made immediately and no later than within two hours to the local law enforcement agency of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse.
 - ii) A written report shall be made to the local ombudsman, the corresponding licensing agency (ex. California Department of Social Services Community Care Licensing), and the local law enforcement agency within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse.
 - b) If the suspected physical abuse does not result in serious bodily injury:
 - i) A telephone report shall be made to the local law enforcement agency within 24 hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse.
 - ii) A written report shall be made to the local long-term care ombudsman, the corresponding licensing agency (ex. California Department of Social Services Community Care Licensing), and the local law enforcement agency within 24 hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse.
 - c) When the suspected physical abuse is allegedly caused by a resident with a physician's diagnosis of dementia, and there is no serious bodily injury, as reasonably determined by the mandated reporter, drawing upon his or her training or experience:
 - i) A telephone report shall be made to the local long-term care ombudsman or law enforcement agency, immediately or as soon as practicably possible.
 - ii) A written report shall be made to the local long-term care ombudsman or law enforcement agency within 24 hours.
- 2) If the suspected or alleged abuse is abuse other than physical abuse:
- a) A telephone report shall be made to local ombudsman or the local law enforcement agency immediately or as soon as practicably possible.
 - b) A written report shall be made to local ombudsman or the local law enforcement agency within two working days.
- 3) These bills did not amend the requirements for mandated reporters to report suspected abuse regarding a dependent adult or elderly client of a Residential Care Facility for the Chronically III. In accordance with Welfare and Institutions Code section 15630(b)(1)(F), for any mandated reporter who, in his or her professional capacity, or within the scope of his or her professional employment, has observed or has knowledge of an incident that reasonably appears to be abuse, or reasonably suspects abuse:
- a) A telephone report or a report through a confidential Internet reporting tool shall be made to adult protective services or law enforcement agency immediately or as soon as practicably possible.

- b) If reported by telephone, a written report shall be sent, or an Internet report shall be made through the confidential Internet reporting tool established in Welfare and Institutions Code Section 15658, shall be made to adult protective services or law enforcement agency within two working days.

As a reminder, Licensing Program Analysts are mandated reporters of suspected dependent adult and elder abuse in accordance with Welfare and Institutions Code Section 15630 and Penal Code Section 11166(a). Also, the licensee and his/her staff are mandated reporters. When a Licensing Program Analyst observes or has knowledge of abuse against an elder or a dependent adult in a long-term care facility, he/she is to complete a State of California (SOC) 341 "Report of Suspected Elder/Dependent Abuse" report if unable to immediately verify and document that an SOC 341 was already submitted for the same suspected abuse by another mandated reporter.

Regional Office staff must refer all allegations of serious abuse or suspicious deaths to the Investigations Branch, as outlined in Evaluator Manual section 1-0620, Investigative Priorities.

Resources

- Suspected elder and dependent adult abuse shall be reported utilizing the SOC 341 Report of Suspected Dependent Adult/Elder Abuse form, which can be found at: <http://www.cdss.ca.gov/cdssweb/entres/forms/English/SOC341.pdf>

Implementation Plan: These reporting requirements are effective January 1, 2013, and the Community Care Licensing Division (CCLD) shall implement as follows:

**Reporting Procedures for Suspected Dependent Adult and Elder Abuse
Occurring In A Long-term Care Facility**

(Adult Residential Facility, Adult Day Program, Adult Residential Facility for Persons with Special Health Care Needs, Social Rehabilitation Facility or Residential Care Facility for the Elderly)

Note: See separate procedures for Residential Care Facilities for the Chronically Ill below.

<p>If suspected physical abuse and it results in serious bodily injury*</p> <p><i>Reference: Welfare and Institutions Code, Sec. 15630 (b)(1)(A)(i)</i></p>	<p><u>Two hours:</u> A telephone report shall be made to the local law enforcement agency immediately, and no later than within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting physical abuse.</p> <p><u>Two hours:</u> A written report shall be made to the local ombudsman, the corresponding licensing agency (e.g. CDSS), <i>and</i> the local law enforcement agency within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting physical abuse.</p>
<p>If suspected physical abuse and it does not result in serious bodily injury*</p> <p><i>Reference: Welfare and Institutions Code, Sec. 15630 (b)(1)(A)(ii)</i></p>	<p><u>24 hours:</u> A telephone report shall be made to the local law enforcement within 24 hours of the mandated reporter observing, obtaining knowledge of, or suspecting physical abuse.</p> <p><u>24 hours:</u> A written report shall be made to the local ombudsman, the corresponding licensing agency (e.g. CDSS), <i>and</i> the local law enforcement agency within 24 hours of the mandated reporter observing, obtaining knowledge of, or suspecting physical abuse.</p>
<p>If suspected physical abuse and it is allegedly caused by a resident with a physician's diagnosis of dementia, and there is no serious bodily injury, as reasonably determined by the mandated reporter drawing upon his or her training or experience</p> <p><i>Reference: Welfare and Institutions Code, Sec. 15630 (b)(1)(A)(iii)</i></p>	<p><u>Immediately or as soon as practically possible:</u> A telephone report shall be made to the local ombudsman <i>or</i> law enforcement agency immediately or as soon as practicably possibly.</p> <p><u>24 hours:</u> A written report shall be made to the local ombudsman <i>or</i> the local law enforcement agency within 24 hours.</p>
<p>If the suspected or alleged abuse is abuse other than physical abuse</p> <p><i>Reference: Welfare and Institutions Code, Sec. 15630 (b)(1)(C)</i></p>	<p><u>Immediately or as soon as practically possible:</u> A telephone report shall be made to the local ombudsman <i>or</i> law enforcement agency immediately or as soon as practicably possible.</p> <p><u>Two working days:</u> If the above was reported by telephone, a written report shall be sent to the local ombudsman <i>or</i> law enforcement agency within two working days.</p>
<p>If the suspected or alleged abuse occurred any place other than a long-term care facility**:</p> <p><i>Reference: Welfare and Institution Code, Sec. 15630 (b)(1)(F)</i></p>	<p><u>Immediately or as soon as practically possible:</u> A telephone report or a report through a confidential Internet reporting tool shall be made to adult protective services or law enforcement agency immediately or as soon as practicably possible</p> <p><u>Two working days:</u> If reported by telephone, a written report shall be sent, or an Internet report shall be made through the confidential Internet reporting tool established in Welfare and Institutions Code Section 15658, shall be made to adult protective services or law enforcement agency within two working days.</p>

* SEC 15610.67. "Serious bodily injury" means an injury involving extreme physical pain, substantial risk of death, or protracted loss or impairment of function of a bodily member, organ, or of mental faculty, or requiring medical intervention, including, but not limited to, hospitalization, surgery, or physical rehabilitation.

A **Residential Care Facility for the Chronically Ill must adhere to this separate provision as this facility type is not a long-term care facility (Welfare and Institution Code, Sec. 15610.47).

ACTION REQUIRED

AB 1472 (Committee on Budget), Chapter 25, Statutes of 2012

Affects: Adult Residential Facilities and Group Homes

Subject: Committee on Budget. Developmental Services.

Summary: Assembly Bill 1472, effective June 27, 2012, amended SEC. 3. Section 1531.1 of and added SEC. 4. Section 1531.15 to the Health and Safety Code.

Note: This section shall become operative only upon the filing of emergency regulations by the State Department of Developmental Services (DDS). Regulations have not been filed and field operations will be notified, in writing, when these regulations have been promulgated.

Secured perimeters (fences) may be used in facilities with more than six residents if the facility is operating in accordance with Section 1531.15, but may not be substituted for adequate staff.

A licensee of an adult residential facility or group home with no more than 15 residents, who are regional center consumers who are eligible for federal Medicaid funding, and are using delayed egress devices in accordance with Section 1531.1, may use secured perimeters.

A child, who is at least 10 years old, but less than 14 years old, may be placed in a group home using secured perimeters if both of the following occur:

- A comprehensive assessment is conducted and an individual program plan (IPP) meeting is convened to determine the services and supports needed for the child to receive services in a less restrictive, unlocked residential setting in California and the regional center requests assistance from DDS to identify options to serve the child in a less restrictive, unlocked residential setting in California.
- A regional center requests placement of a child in a group home using secured perimeters to prevent out-of-state placement or placement in a more restrictive, locked residential setting, and DDS approves the request.

The child may not be a foster child under the jurisdiction of the juvenile court pursuant to Section 300, 301 or 602 of the Welfare and Institutions Code (WIC).

The IPP shall have determined that the person lacks hazard awareness or impulse control and requires the level of supervision afforded by a facility using secured perimeters, or the person would be at risk or have no option but to remain in more restrictive placement.

The licensee shall be subject to all applicable fire and building codes, regulations, and standards, and shall receive approval by the county or city fire department, the local fire prevention district, or the State Fire Marshal for the installation of the secured perimeter.

The licensee shall provide staff training regarding the use and operation of the secured perimeter, protection of residents' personal rights, lack of hazard awareness and impulse control, and emergency evacuation procedures.

The licensee shall revise the facility plan of operation and shall have it approved by DDS prior to use of the secured perimeter. The Department of Social Services (DSS) shall not approve the revised plan of operation until the licensee provides certification of DDS approval.

The plan of operation shall include, but is not limited to, the following descriptions:

- How the facility is to be equipped with secured perimeters consistent with regulations adopted by the State Fire Marshal pursuant to Health and Safety Code Section 13143.6.
- How the facility will provide staff training.
- How the facility will protect the residents' personal rights consistent with Sections 4502, 4503 and 4504 of the Welfare and Institutions Code and any applicable Title 22 Regulations.
- How the facility will manage residents' lack of hazard awareness and impulse control behavior.
- Facility's emergency evacuation procedures.

Emergency fire and earthquake drills shall be conducted on each shift in accordance with existing regulations, and shall include all staff on each shift that provide resident care and supervision.

The facility shall provide interior and exterior space for clients to move safely and freely.

The licensee shall not be required to obtain a waiver or exception to a regulation that would otherwise prohibit the locking of a perimeter fence or gate.

Implementation: This statute became effective on June 27, 2012. However, this section shall become operative only upon the filing of emergency regulations by the State Department of Developmental Services (DDS).

Enforcement Procedures: In the event Health and Safety Code Section 1531.15 has become operative and the facility has installed and is utilizing secured perimeters, and the requirements listed above have not been met, the Licensing Program Analyst shall cite the licensee according to the applicable Title 22 Regulation(s) and/or statute(s) in the Community Care Facilities Act.

In the event Health and Safety Code Section 1531.15 has not become operative, a facility (with the exception of a Community Treatment Facility) may not utilize secure perimeters. The Licensing Program Analysts shall cite for the violations according to the applicable Title 22 Regulation(s) and/or statute(s) in the Community Care Facilities Act.

ACTION REQUIRED

Assembly Bill 2343 (Torres), Chapter 256, Statutes of 2012

Affects: All Community Care Facilities (CCF), Residential Care Facilities for the Elderly (RCFE), Residential Care Facilities for the Chronically Ill (RCF-CI) and all Child Care Facilities (CCF)

Subject: Criminal History Information

Summary: AB 2343 amends Sections 11105 and 11105.2 of the Penal Code, relating to criminal history information.

AB 2343 authorizes the Department of Justice (DOJ) to provide subsequent conviction information to CCLD. Previously DOJ provided this information without authority. DOJ ceased this practice in March of 2011.

In addition, this bill requires that CCLD provide an individual a copy of their entire criminal history record if the record is the basis for an adverse employment, licensing or certification decision.

Implementation: These provisions will be effective January 1, 2013. CBCB will revise its processes, the Evaluator Manual and the letters sent to individuals to include this information.

ACTION REQUIRED

SB 1377 (Corbett), Chapter 664, Statutes of 2012

Affects: All Community Care Facilities: [Community Treatment Facilities, Foster Family Homes, Group Homes, Small Family Homes, Foster Family Agencies (Certified Family Homes), Transitional Housing Placement Programs, Crisis Nurseries, Adult Residential Facilities, Social Rehabilitation Facilities, Adult Day Programs, Adult Residential Facilities for Persons with Special Health Care Needs], Residential Care Facilities for Persons with Chronic Life-Threatening Illness, Residential Care Facilities for the Elderly, Family Child Care Homes, Child Care Centers.

Subject: Protection and advocacy agencies

Summary: Senate Bill 1377 amends Sections 4514, 4903, and 5328.15 of the Welfare and Institutions Code, relating to public social service. This bill requires the Department of Social Services (Department) to provide Protection and Advocacy Agencies access to specified unredacted reports for clients in licensed facilities that care for persons who are mentally ill and/or developmentally disabled.

Protection and Advocacy Agencies are private, nonprofit corporations charged with protecting and advocating for the rights of persons with disabilities. These agencies have authority to investigate incidents of abuse or neglect if the complaints are reported to the protection and advocacy agency or if probable cause exists to believe abuse or neglect has occurred.

Current law requires information obtained by service providers in the course of providing intake, assessments, and services to persons with developmental disabilities to be confidential. This bill added an exception to this confidentiality protection by authorizing Protection and Advocacy Agencies to have access to information and records to the extent that the information is incorporated within an unredacted Facility Evaluation Report (LIC 809) or an unredacted Complaint Investigation Report (LIC 9099). This bill also requires the Department to turn over unredacted LIC 809s and LIC 9099s to the Protection and Advocacy Agencies.

NOTE: Though the Department does not have the authority to enforce this section of the Welfare and Institutions Code, for information only, the licensees are also required, upon request, to provide to the Protection and Advocacy Agencies an unredacted Facility Evaluation Report (LIC 809) or an unredacted Complaint Investigation Report (LIC 9099).

Implementation: Currently in California, the established Protection and Advocacy Agency is Disability Rights California. Upon request, a Licensing Program Analyst shall provide to the Protection and Advocacy Agency, a copy of an unredacted LIC 809 Facility Evaluation Report and a copy of an unredacted LIC 9099 Complaint Investigation Report.

INFORMATION ONLY - NO ACTION REQUIRED

SB 1381 (Pavley), Chapter 457, Statutes of 2013

Affects: Community Care Facilities: [Community Treatment Facilities, Foster Family Homes, Group Homes, Small Family Homes, Foster Family Agencies (Certified Family Homes), Transitional Housing Placement Programs, Crisis Nurseries, Adult Residential Facilities, Social Rehabilitation Facilities, Adult Day Programs, Adult Residential Facilities for Persons with Special Health Care Needs], Residential Care Facilities for Persons with Chronic Life-Threatening Illness, Residential Care Facilities for the Elderly, Family Child Care Homes and Child Care Centers.

Subject: Mental Retardation: change of term to intellectual disability

Summary: Senate Bill 1381, effective January 1, 2013, changes the term mental retardation to intellectual disability in California Statute. It is the Legislature's intent to increase respect for people with disabilities by eliminating the terms "mental retardation" and "mentally retarded," as they are outdated, offensive, and misleading.

Though this bill does not impact the California Community Care Facilities Act, the Residential Care Facilities for Persons with Chronic Life-Threatening Illness Act, Residential Care Facilities for the Elderly Act or the California Child Day Care Act, this bill amended the Business and Professions Code, Civil Code, Education Code, Government Code, Health and Safety Code, Insurance Code, Penal Code, Probate Code, Vehicle Code, and the Welfare and Institutions Code, relating to intellectual disabilities. The terms "mental retardation" and "mentally retarded person" were replaced with "intellectual disability" and "person with intellectual disability," respectively. This shall not be construed to change the coverage, eligibility, rights, responsibilities, or substantive definitions referred to in the amended provisions.

Implementation: In state regulation, state publication, or other writing, the terms "mental retardation" and "mentally retarded person" shall have the same meaning as the terms "intellectual disability" and "person with intellectual disability," unless the context or an explicit provision of federal or state law clearly requires a different meaning.

If the department has reason to revise or write state regulation, state publications, Internet Web sites, and other writing, it is the intent of the Legislature that the department use the terms, "intellectual disability" and "person with intellectual disability." "Intellectual disability" and "person with intellectual disability" have the same meanings as "mental retardation" and "mentally retarded person" respectively, unless the context or an explicit provision of federal or state law clearly requires a different meaning.