Why San Francisco Should Not Build a Licensed Residential Care Facility for the Elderly (RCFE) on the Laguna Honda Campus - Response to the Laguna Honda Assisted Living Feasibility Study
August 23, 2007

I. Introduction
On August 1, 2007, San Francisco issued the Laguna Honda Assisted Living Feasibility Study which proposes that the assisted living component of the Laguna Honda rebuild consist of a licensed Residential Care Facility for the Elderly (RCFE). The Feasibility Study contemplates five versions of licensed RCFEs, ranging from 148 to 280 beds. The least costly proposal considered in the Feasibility Study is $148 million, at a per person construction cost of $783,354, and a per person per year operating cost of $171,806.  

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<tr>
<th>OPTION</th>
<th>TOTAL COST TO BUILD</th>
<th>CONSTRUCTION COST PER PERSON</th>
<th>ANNUAL OPERATING COSTS</th>
<th>OPERATING COST PER PERSON</th>
<th>COST TO SAN FRANCISCO PER YEAR PER PERSON</th>
<th>AMOUNT ABOVE CURRENT PER PERSON SAN FRANCISCO SUBSIDY TO LAGUNA HONDA</th>
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1 As a comparison, the average cost of assisted living (RCFEs or other Private Pay facilities) in San Francisco annually is $40,794.00.
3 http://www.sfdph.org/LHHReplace/ExistRpts/documents/Intro4FeasabilityStudy08012007.pdf at 18
4 Includes depreciation and interest.
5 Assuming that funding comparable to the ALWPP rate and individual SSI payments are available.
Because none of these options is cost-effective, and none affords residents the opportunity for maximum independence, interaction with non-disabled peers, access to the community, or choice in their daily lives, Protection and Advocacy recommends that San Francisco not build this facility on the Laguna Honda campus. Rather, San Francisco should increase its investment in home and community-based living arrangements with supports for seniors and people with disabilities.

II. What is Assisted Living?

Although the Feasibility Study defines “assisted living” as a licensed Residential Care Facility for the Elderly (RCFE), in fact, both nationwide and in California there is no one definition of assisted living. “Assisted living” in California is not a licensing category nor is it defined in law in a consistent way. Assisted living is used to mean a package of services that includes housing with supports, such as attendant care, adult day health care, meals assistance, transportation, home nursing, case management, 24-hour supervision, laundry, housekeeping, and medication management as needed by the individual. Individuals can receive assisted living services while living in their own apartments or houses; a subsidized housing complex with on-site supports; a licensed community care facility (Residential Care Facility for the Elderly (RCFE) or Adult Residential Facility (ARF)); or a Continuing Care Community (usually three tier, \textit{private pay}, buy-in program that provides different living levels – including independent apartments, RCFE beds and Skilled Nursing Facility beds).

The California Assisted Living Waiver Pilot Program (ALWPP) is the only program in the state with Medi-Cal funding for assisted living.\footnote{There is a special "board and care deduction" that allows individuals to use their Medi-Cal share of cost to pay for RCFE services. \textit{See,} \textit{California Code of Regulations, Title 22 Section 50515(a);} \url{http://www.canhr.org/RCFE/RCFE_FS_html/rcfe_board_care_deduction.htm}} The ALWPP offers assisted living to a maximum of 1000 people in three specific counties—San Joaquin, Los Angeles, and Sacramento. Participants must be 21 years or older, and both Medi-Cal and nursing-home eligible. They can live in either a licensed RCFE or in publicly subsidized housing.

According to the ALWPP, assisted living provides or coordinates oversight and services to meet the residents’ individualized scheduled needs…and their unscheduled needs as they arise. Services must include, but are not limited to: 24-hour awake staff; personal care services; medication management services; social
There are significant limitations to the AWLPP, including:

- **Funding.** Medi-Cal’s yearly reimbursement for all services averages $22,832 per person. Residents’ SSI in the amount of $916.00 per month goes towards room and board. Residents are allowed to keep $119 per month. This means that the total amount available to fund room, board, and supportive services averages $33,824 per person per year.

- **Physical Plant:**
  - Participating RCFEs must have the following: Units/Rooms must be single occupancy with bathrooms shared by no more than 1 other resident. Units/Rooms must have kitchenettes. Units may be shared only at the documented choice of the resident.
  - Residents receiving ALWPP services and not living in RCFEs must live in publicly subsidized housing and receive services from a Home Health Agency.

### III. General Limitations on Residential Care Facilities for the Elderly

Because RCFEs normally are not licensed to provide skilled nursing care, the state has granted waivers to all RCFEs participating in the ALWPP which enable participating RCFEs to care for ALWPP residents who have higher care needs.

Usually, RCFEs serve persons 60 and older. They provide room, board, housekeeping, supervision, and personal care assistance with basic activities like personal hygiene, dressing, eating, and walking. Facilities usually centrally store and distribute medications for residents to self-administer. This level of care and supervision is for people who are unable to live by themselves but who do not need

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6 [http://www.californiaassistedliving.org/c/definition.shtm](http://www.californiaassistedliving.org/c/definition.shtm)
7 AWLPP Waiver at Appendix G-8.
8 There is a special non-medical board and care rate that is higher than the regular SSI rate for persons living independently in homes or apartments. As of January 2007, the maximum SSI/SSP Non-Medical Board and Care (RCFE) benefit is $1,035; a resident keeps $119 for incidentals; $916 is left.
nursing facility level of care. They are considered non-medical facilities and are not required to have nurses, certified nursing assistants or doctors on staff.\textsuperscript{10}

In addition to the restrictions on the level of care provided, RCFE regulations provide that the owner/administrator of a facility hire staff, thus by definition, residents do not have their choice of care provider. Nor are schedules or choices in food generally flexible, as they would be in an independent or supportive housing setting.

**IV. The Olmstead Decision and the Community Integration Mandate**

On June 22, 1999, the United States Supreme Court held in *Olmstead v. L.C.* that the unnecessary segregation of individuals with disabilities in institutions may constitute discrimination based on disability. The Court ruled that the Americans with Disabilities Act (ADA) which prohibits discrimination based on disability, requires states and local governments to provide community-based services, rather than placement in nursing homes, psychiatric facilities and other institutions, for people with disabilities who can be served in the community. The Court in *Olmstead* noted that institutionalization “severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.”\textsuperscript{11}

San Francisco’s own assessments show that a significant majority of current Laguna Honda residents are capable of living in community-based settings, and that at least 70% would prefer to do so. A large licensed RCFE on the Laguna Honda campus thus does not reflect the needs or preferences of seniors and people with disabilities who would likely live there. In any version of the options considered in the Feasibility Study, a large RCFE will result in an extremely expensive, institutional setting. Inherent in institutional care is the inability to choose one’s own care provider, direct one’s own care, and make one’s own schedule. Residents of RCFEs face the same limitations as in other institutional care—lack of personal choice, access to community activities, and interaction with non-disabled peers.

\textsuperscript{10} State regulations prohibit RCFEs from admitting individuals who require: 24-hour skilled nursing or intermediate care; have active communicable tuberculosis; have a behavior that would upset the general resident group; have dementia, unless a waiver is granted; are bedridden, with certain exceptions; have Stage 3 and 4 pressure sores; require gastrostomy care; have naso-gastric tubes; have a staph infection or other serious infection; or residents who depend on others to perform all activities of daily living for them or who have tracheostomies.

\textsuperscript{11} *Olmstead* at 601.
V. **Proposition A Does Not Require That Assisted Living be Built on the Laguna Honda Campus**

In 1999 the voters of San Francisco approved Proposition A, a $299 million general obligation bond measure along with tobacco settlement money to “acquire, construct or reconstruct a health care, assisted living and/or other type of continuing care facility or facilities to replace Laguna Honda Hospital.” The number of beds to be built was not included in the bond ordinance. According to the San Francisco Controller, the amount available to fund the rebuild as of May 2005 was approximately $621 million.\(^{12}\)

The assisted living component in the originally planned Laguna Honda rebuild was to serve 140 individuals, and was partially funded with $15 million. The assisted living contemplated was an independent housing model, and not a licensed institutional model. Nothing in Proposition A requires a rebuild of Laguna Honda at a specific size, nor does Proposition A require construction of a licensed facility.\(^{13}\) Moreover, San Francisco is free to use Proposition A bond and tobacco settlement money for community-based living arrangements, rather than on the Laguna Honda campus. While $480 million has been committed to build 780 nursing facility beds in three buildings on the Laguna Honda campus, San Francisco could use the remaining funds identified by the San Francisco City Controller in his May 2005 report to provide a variety of integrated, community-based living arrangements and serve far more people at far less cost. To date, potentially available funds total $128 million.\(^{14}\)


\(^{13}\) On March 30, 2005, at San Francisco’s urging, Judge James L. Warren of the San Francisco Superior Court issued a decision holding that, “[n]othing in the Proposition A “bond contract” limits the type of facility the City must construct to a “long term care facility.” Moreover, nothing in the Proposition A “bond contract” requires the City to construct a facility of a specific size. *Monette-Shaw v. San Francisco Board of Supervisors*, San Francisco Superior Court Case No. CPF 04-504777, affirmed, *Monette-Shaw v. San Francisco Bd. of Supervisors*, 139 Cal.App.4\(^{th}\) 1210, 43 Cal.Rptr.3d. 659 (Cal. Ct. App. 1\(^{st}\) Dist., May 26, 2006).

VI. There is No Cost-Effective Way to Finance the Building of and Fund the Operational Expenses for a Licensed RCFE on the Laguna Honda Campus

“The central finding of [the Feasibility Study] is that spiraling construction costs have made the original options for placing assisted living on the Laguna Honda campus unsatisfactory.”  

The Feasibility Study proposes no available source of funding for either construction or operation of the new institution. In addition to construction costs, which are not budgeted above $15 million, and will range from to $148 million to $246 million, ongoing operating costs for San Francisco will range from $25 million to $40 million per year. The only way that San Francisco proposes to obtain Medi-Cal reimbursement is: 1) through the current Assisted Living Waiver Pilot Program which is not available in San Francisco; and 2) through the Leno Waiver, neither of which is feasible or advisable.

1) Assisted Living Waiver Pilot Program
Under the ALWPP, Medi-Cal reimbursement averages $22,832 per person annually. Even if San Francisco were to become a participant in the ALWPP, the city would still have to subsidize the difference, ranging from a subsidy in the amount of $102,726 per person per year (Option E) to $137,982 per person per year (Option A). The ALWPP is not currently available in San Francisco, and there is no current plan for the project to expand into San Francisco.

2) Leno Waiver
AB 2968, (or the Leno Waiver), is a bill developed with the goal of expanding community-based options for people with disabilities who would otherwise require or be at high-risk of requiring more costly institutional care. Notwithstanding the fact that the Leno Waiver was intended to help individuals leaving Laguna Honda and going into the community, it is highly unlikely that the reimbursement will be

16 Assembly Bill No. 2968, more commonly known as the Leno Waiver.
17 From http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_2951-3000/ab_2968_bill_20060930_chaptered.html: This bill will provide for an array of health-related and psychosocial services provided or coordinated at community-based housing sites that enable beneficiaries to remain in the least restrictive and most homelike environment while receiving health-related services. See also, http://democrats.assembly.ca.gov/members/a13/internetoutreach/LenoReport200606.htm;
sufficient to fund the operating costs of any of the options proposed in the Feasibility Study. Moreover, the Leno Waiver anticipates that San Francisco, not the State, will match any federal contributions, thus this option does not relieve the city of the operating costs, and in fact would require more of a financial commitment from San Francisco than would using the ALWPP to fund the project.

The only funding that would be guaranteed are potential residents’ SSI contributions. At the SSI/SSP rate for RCFEs of $916 per person per month payments from individual residents, San Francisco will have to determine how to fund all other costs above that amount.  

VII. WHAT IS THE ALTERNATIVE?

There are a number of models in San Francisco that currently provide or could provide a package of housing and services to adequately meet the needs of persons with disabilities and seniors who would otherwise require care in a nursing facility. As San Francisco’s assessments have shown, most people at Laguna Honda do not want or need to live there. Their needs could be better met if San Francisco uses its resources to ensure that seniors and people with disabilities have access to the wide array of currently and potentially available home and community-based programs in the city. Such options are truly integrated and have proven to be cost-effective alternatives to institutional care. For example:

- **Medi-Cal State Plan and other City and State services.** Individuals can receive a variety of Medi-Cal and other services in their own homes or apartments, including adult day health programs, home health aides, In Home Supportive Services (IHSS), case management, representative payee services, transportation/paratransit, and home delivered and congregate meals. Medi-Cal services are funded primarily with state and federal dollars. In addition, through an innovative new City program, additional as-needed services can be provided by the San Francisco Community Living Fund.

  - Person A, who wishes to live independently, and has an apartment, but has trouble paying her rent, and needs her bathroom made accessible, could be discharged home with: up to 9 hours of IHSS; three (or more) visits per week to an adult day health care center for primary care and other services; receive case management and home

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18 As of January 2007, the maximum SSI/SSP Non-Medical Board and Care (RCFE) benefit is $1,035; a resident keeps $119 for incidentals.
modifications through the Community Living Fund; have home
delivered meals; and, if she chose, money management through a
representative payee service. In addition, Person A could receive a
rental subsidy for her apartment from San Francisco if necessary.

○ Person B lives at a subsidized supported housing facility similar to
Mission Creek, where her rent would be subsidized and she could:
attend adult day health care on site; have up to nine hours per day of
IHSS in her apartment; receive case management; have any home
modifications and any needed furniture or supplies paid for through
the Community Living Fund; receive home delivered meals; and have
money management on-site.

- Medi-Cal funded Home and Community-Based Services Waivers such as
the AIDS Waiver, the Multi-Services Senior Program (MSSP) program, and
the new NF/AH Waiver are available to supplement the services described
above. These are State and Federally funded Medi-Cal programs, and
operate at little or no cost to San Francisco. The NF/AH Waiver has special
provisions for Laguna Honda residents—up to 500 residents are eligible to
receive $77,600 in Medi-Cal funded Home and Community-Based Services
per year, if they live in independent (non-licensed) community housing. In
addition, San Francisco is working on development of the Leno Waiver, a
new program which will provide Medi-Cal reimbursement for a variety of
community services.

○ As a recipient of NF/AH Waiver services, Person C, who has had a
traumatic brain injury could receive (in addition to the services that
person A could receive): transitional case management as he prepares
to leave Laguna Honda; habilitation to assist with independent living
skills; case management; personal attendant care for needs that exceed
his IHSS maximum; home nursing care; home modifications as
needed; and have a personal emergency response system set up.
Because he needs overnight supervision, he will live in a 3 bedroom
apartment with another person with a disability who receives NF/AH
Waiver services. By sharing attendant care, they can afford to pay for
a live-in attendant. San Francisco can pay a rental subsidy to cover
rental costs that exceed the roommates’ SSI payments.
Person D, because she is a senior, could live at a subsidized housing site similar to Mission Creek and receive case management through the MSSP Waiver in addition to the services Person A receives. Additional services through MSSP include but are not limited to: a personal emergency response system; respite care; money management; and care provider services not included with IHSS. Person D would attend adult day health care at her housing site, and would have: up to nine hours per day of IHSS in her apartment; home delivered meals; and any home modifications, and any needed furniture or supplies, paid for through the Community Living Fund.

- **The Program of All-inclusive Care (PACE)** – which provides nursing home eligible seniors, (55 and above) with a complete program of community based health and health-related services including preventative, primary and acute medical services and long-term care. PACE is funded by Medi-Cal/Medicare and/or private pay, and is at no cost to San Francisco.

  - PACE would provide Person E, who is an eighty-year old woman living with her daughter, with all necessary medical care, including: specialist and nursing care; medications and durable medical equipment; recreational therapy programs such as, music, art, drama, celebrations, special events, exercise programs, support groups and field trips; transportation to and from the PACE Centers and other services; and assistance with personal care and light housekeeping in her home.

- **Residential Care Facilities for the Elderly, Adult Residential Care Facilities (Board and Care Homes)**. San Francisco currently provides rental subsidies to individuals living in these types of settings.

Not only do these options provide a more integrated and more desirable setting for seniors and people with disabilities; they cost much less than institutional care. Compare the costs to San Francisco of the proposed assisted living program options at Laguna Honda with the cost to San Francisco of community-based housing with supportive services:19

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19 The only figures considered are actual costs to San Francisco, thus programs such as PACE and NF/AH Services are not included, but assumed available.
<table>
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<tr>
<th>TYPE OF SETTING</th>
<th>COST TO SAN FRANCISCO PER PERSON PER YEAR</th>
<th>SERVICES/COST BREAKDOWN</th>
<th>CONSTRUCTION COSTS PER UNIT</th>
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| Supportive Housing with Services (i.e., Mission Creek) | $33,538                                   | Housing Costs: $1200-$1600 per month subsidy from San Francisco, average $16,800 per year  
IHSS 9 hours per day, average $10,903/yr to San Francisco  
Adult Day Health Care average $5835/year to San Francisco | $312,142²² |
| Proposed LHH Assisted living Options A-E              | $127,728—$171,806                         | Currently no option for reimbursement from Medi-Cal; Assisted living Waiver Rate is $22,832 per year. | $564,286—$978,961 |
| Independent Housing with Services (Market Rate housing) | $29,539                                   | Housing Costs: rental subsidies, $12,801/year  
IHSS 9 hours per day, average $10,903/yr to San Francisco  
Adult Day Health Care average $5835/year to San Francisco | N/A |
| Board and Care and RCFE settings                      | $20,483                                   | Subsidy to Provider: $20,483/year                                                        | N/A |

²⁰ Figures are Based on May 2005 Controller’s Report:  
²¹ Per Margot Antonetty at the June 15, 2007 Mayor’s Disability Council meeting, $1200-1600 per person per month spent by San Francisco on supportive housing which includes onsite services and property management costs as well as rent subsidy.  
²² Assuming figures for Mission Creek. Mission Creek was a $43.7 million dollar project that developed adult day health care on site, and has 140 units. It was more expensive to build than other similar facilities because of bay-fill construction issues.  
VIII. Conclusion

In the face of San Francisco’s own assessments, which show that a significant majority of current Laguna Honda residents are capable of living in community-based settings, and that at least 70% would like to do so, the proposal to build a licensed RCFE on the Laguna Honda campus does not reflect the needs and preferences of seniors and people with disabilities. Rather than increasing integration into the community, creating “institutional” assisted living at Laguna Honda will continue the unnecessary segregation of seniors and people with disabilities, in violation of the ADA and Olmstead, for generations to come.

San Francisco should instead use available resources to construct, modify, and/or fund a range of community-based housing and services. The City has a legal and ethical duty to use its resources to truly reflect its commitment to the civil rights of seniors and people with disabilities by funding community-based and integrated programs. Not only will this commitment be cost-effective, it will align with the desire of the majority of seniors and people with disabilities to live in their own homes or community-based settings and not in institutions.