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MEMORANDUM

TO: Interested Persons
FROM: Disability Rights California
RE: **Eviction Rights of Community Care Facilities Residents**
DATE: June 7, 2006

This memo pertains to residential Community Care Facilities (CCFs) which serve adults and elderly persons with disabilities. CCFs are defined as any facility, place or building where nonmedical care and supervision are provided. 22 C.C.R. § 80001(c)(13). However, CCFs may provide certain health related services under specified conditions. 22 C.C.R. §§ 80090 *et seq.* & 87700 *et seq.* The state licensing agency for CCFs is Community Care Licensing Division, Department of Social Services.

Advocates should be aware that clients in facilities have basic rights that are not detailed in this memo. In addition, other laws including (but not limited to) the federal Fair Housing Amendments Act of 1988, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and the California Fair Employment and Housing Act may apply, depending upon the facts involved in each particular case. Advocates who are not familiar with this area of the law should contact Disability Rights California for technical assistance.

Clients' eviction rights vary according to the type of facility involved. Therefore, one must initially ascertain the type of facility the client resides in. CCFs are grouped into several categories, including:

Adult Residential Facilities (ARFs): defined as "any facility of any capacity which provides 24-hours a day non-medical care and supervision to adults except elderly persons." 22 C.C.R. § 80001(a)(7). See also Cal. Health & Safety Code §§ 1500 *et seq.*

Social Rehabilitation Facilities (SRFs): defined as "any facility which provides 24-hour-a-day non-medical care and supervision in a group setting to adults

recovering from mental illness who temporarily need assistance, guidance or counseling." 22 C.C.R. § 80001(s)(4). See also Cal. Health & Safety Code §§ 1500 *et seq.*

Residential Care Facilities for the Elderly (RCFE): facilities that serve individuals age 60 or older. 22 C.C.R. § 80001(e)(2). See also Cal. Health & Safety Code §§ 1569 *et seq.*

Group Homes: facilities that provide 24-hour care and supervision to children in a structured environment, as specified. 22 C.C.R. §80001(g)(1). "Child" means a person who is under 18 years of age. 22 C.C.R. §80001(c)(6). See also Cal. Health & Safety Code §§ 1500 *et seq.*

Small Family Homes: these are family residences that provide 24-hour a day care for six or fewer children who are mentally disordered, developmentally disabled or physically handicapped and who require special care and supervision as a result of such disabilities. 22 C.C.R. § 80001(s)(3). See also Cal. Health & Safety Code §§ 1500 *et seq.*

The general licensing requirements for CCFs are found in Chapter 1 of Division 6 of Title 22, California Code of Regulations (§ 80000 *et seq.*) This chapter contains provisions affecting clients' rights and pertains to all types of facilities, except as specified. Chapter 2 of this Division (§ 81000 *et seq.*) contains additional regulations that pertain specifically to SRFs, Chapter 4 (§ 83000 *et seq.*) contains regulations that pertain to Small Family Homes, Chapter 5 (§ 84000 *et seq.*) contains regulations that pertain to Group Homes and Chapter 6 (§ 85000 *et seq.*) contains additional regulations that pertain to ARFs. RCFEs are governed by Chapter 8 (§ 87100 *et seq.*) only; Section 87100 states that "the provisions of Chapter 1, Division 6 shall not apply to the provisions of Chapter 8, Residential Care Facilities for the Elderly."

For purposes of analysis, ARFs and SRFs will be discussed together, as will Group Homes and Small Family Homes. RCFEs will be dealt with separately, as they are governed by discrete regulations. ARFs and SRFs are commonly known as "Board and Cares."

I. Eviction Procedures in ARFs and SRFs

A. Admission Agreements

Under Chapter 1, facilities are required to complete and maintain current individual written admission agreements with all clients or their authorized representatives, if any. 22 C.C.R. § 80068(a). Admission agreements must specify the conditions under which the agreement may be terminated. 22 C.C.R. § 80068(c)(7). Such agreements shall be dated and signed by a representative of the ARF and the client or his/her authorized representative no later than seven calendar days following admission. 22 C.C.R. § 80068(d). Modifications to the original agreement shall be made whenever circumstances covered in the agreement change, and shall be dated by the persons specified above. 22 C.C.R. § 80068(e). The facility shall retain the original copy of the agreement and provide copies to the client and any authorized representative. 22 C.C.R. § 80068(e). The admission agreement must specify, among other things, facility policies which are intended to ensure that no client, in the exercise of his/her personal rights, infringes upon the personal rights of any other client. 22 C.C.R. §§ 81068(c) & 85068(b)(2). Additionally, with regard to SRFs only, the agreement must specify those actions, circumstances, or conditions which may result in the client's eviction from the facility as specified in section 81068.5 (which is discussed below). 22 C.C.R. § 81068(b)(2). As part of the admission procedure, SRFs and ARFs are required to interview the prospective client and his/her authorized representative, if any, and provide the prospective client with information about the facility, including the information contained in the admission agreement and any additional policies and procedures, house rules, and activities. 22 C.C.R. §§ 81068.1(c)(1)(A) & 85068.1(c)(1)(A).

Thus, in analyzing an eviction case for a CCF resident, one must examine the admission agreement to ensure that it is current, contains all the necessary information and modifications, sets forth the conditions under which the agreement may be terminated, is signed by all concerned parties and was explained to the client.

B. Needs and Services Plans

Additionally, SRFs and ARFs are required to complete a "needs and services plan" for each client, according to specified criteria. 22 C.C.R. § 80068.2(a). The written needs and services plan shall be maintained in the client's file. 22 C.C.R. § 80068.2(c). The facility shall update each client's written needs and services plan

as specified, but at least annually; such modifications must also be maintained in the client's file. 22 C.C.R. § 80068.3(a). Clients shall be allowed to participate in updating the needs and services plan. 22 C.C.R. §§ 81068.3(a) & 85068.3(a).

It is important to find out whether a facility has complied with the requirements regarding a client's needs and services plans and any modifications to the plan. If not, the client can use such failure to defend against an eviction. Requirements for SRF clients' needs and services plans are set forth at 22 C.C.R. §§ 81068.2 & 81068.3. Requirements for ARF clients' needs and services plans are set forth at 22 C.C.R. §§ 85068.2 & 85068.3.

For both SRFs and ARFs, if modifications to the plan identify an individual client need which is not being met by the program of services, certain professionals shall be consulted to assist in determining if such needs can be met. 22 C.C.R.

§§ 81068.3(d)(1) & 85068.3(b)(1). If it is determined that the client's needs can be met, the facility shall develop and maintain a written plan that includes specified criteria, including written objectives, a timeframe, plans for meeting the objectives and a method of evaluating progress. 22 C.C.R. §§ 81068.3(d)(2), subs. (A)-(D) & 85068.3(b)(2), subs. (A)-(D).

C. Relocation Notices

In general, if a facility determines that the clients' needs cannot be met, the facility shall inform the client and his/her authorized representative, and placement agency, if any, and request that the client relocate to a facility that can provide the needed services. 22 C.C.R. § 80068.3(b). SRFs are required to bring the fact that the clients' needs cannot be met to the attention of the client and his/her authorized representative or mental health professional, if any, and request that the client relocate. 22 C.C.R. § 810068.3(d)(3). ARFs are required to inform the client and/or his/her authorized representative, if any, or responsible person, if there is no authorized representative, of the fact that the clients' needs cannot be met and request that the client relocate. 22 C.C.R. § 85068.3(b)(3). ARFs, therefore, have an additional duty to notify a "responsible person" as well as the client.

If the ARF or SRF resident refuses to relocate, the facility may evict the client, in accordance with specified procedures (discussed below). 22 C.C.R.

§§ 80068.3(b)(1), 810068.3(d)(3)(A) & 85068.3(3)(A). Thus, only after complying with all of the procedures outlined above, and if the client refuses to relocate, may a facility evict the client.

D. Eviction Procedures in ARFs and SRFs

The grounds and procedures for eviction set forth in 22 C.C.R. § 80068.5 apply to both SRFs and ARFs. In addition, Section 81068.5 sets forth eviction provisions

that apply only to SRFs and Section 85068.5 sets forth eviction provisions that apply only to ARFs. There are two distinct procedures, a 30-day and a 3-day procedure.

1. 30-Day Notices

Section 80068.5 provides that a facility may evict a tenant with 30 days written notice only for one or more of the following reasons:

- (1) Nonpayment of the rate for basic services within ten days of the due date.**
- (2) Failure of the client to comply with state or local law after receiving written notice of the alleged violation.**
- (3) Failure of the client to comply with general facility policies that are documented in the facility admission agreement and are for the purpose of making it possible for the clients to live together.**
- (4) For a SRF, failure of the client to participate in the services and activities specified in the treatment/rehabilitation plan to the extent of his/her ability.**
- (5) Inability to meet the client's needs.**
- (6) A Needs and Services Plan modification must have been performed, as specified in section 80068.3(a), which determined that the client's needs cannot be met by the facility and the client has been given the opportunity to relocate as specified in Section 80068.3(b) [emphasis added].**
- (7) The client refuses to comply with his/her Restricted Health Conditional Care Plan, if any, as specified in Section 80092.2.**
- (8) Change in use of the facility.**

With regard to the bolded language in number (6) above, note that section 80068.3(b) does not provide that the client be given an opportunity to relocate, only that the facility shall request that the client relocate. Advocates should argue, however, that such opportunity shall nevertheless be granted, pursuant to section 80068.5(4)(A).

Sections 81068.5 and 85068.5 (applicable to SRFs and ARFs, respectively) do not deviate from the above provisions in any significant way. The same discrepancies also exist in that there is language granting clients the right to an opportunity to relocate as specified elsewhere, yet the section referenced does not elaborate on

this right. See §§ 81068.5(a)(4) & 81068.3(d)(3); also 85068.5(a)(4) & 85068.3(b)(3). Again, the regulations indicate that such a right does exist. In summary, adult CCF residents may legitimately be served with a 30-day eviction notice only for one or more of the reasons set forth above.

2. 3-Day Notices

Further, a facility may evict a client with a 3-day notice only in specified circumstances. Section 80068.5 provides that a facility must obtain prior written approval from the Department to evict a client upon a three-day notice to quit and upon a finding of good cause. 22 C.C.R. § 80068.5(b). Good cause exists if the client engages in behavior that threatens the mental and/or physical health or safety of himself/herself or others in the facility. 22 C.C.R. § 80068.5(b)(1). Failure of the Department to reply to the request for approval within two working days shall be considered approval. 22 C.C.R. § 80068.5(b)(2). The notice to quit shall state the reasons for the eviction, with specific facts supporting the reason for the eviction, including the date, place, witnesses, if any, and circumstances. 22 C.C.R. § 80068.5(c).

Sections 81068.5 (SRFs) and 85068.5 (ARFs) contain similar but different provisions which alter the facility's and licensing agency's burdens with respect to a 3-day notice. Both sections provide that a facility may obtain either written or *documented telephone* approval from the licensing agency for the eviction [emphasis added]. 22 C.C.R. §§ 81068.5(b)(1) & 85068.5(b)(1). Both sections stipulate that the licensing agency shall approve or deny the request for approval within two working days. 22 C.C.R. §§ 81068.5(b)(1)(A) & 85068.5(b)(1)(A). While Section 85068.5 provides that the Department's failure to reply within two working days shall be considered approval, section 81068.5 contains no such provision. Thus, it could potentially be argued in the case of an SRF resident receiving a 3-day notice to quit, that the notice is invalid if the facility failed to obtain prior written approval, pursuant to Section 81068.5. However, a facility that sought such approval might argue that the Department's failure to respond within two working days can be deemed approval under the general licensing requirements set forth in Chapter 1.

In most other respects, sections 81068.5 and 85068.5 are virtually identical to the general licensing requirements outlined above. Thus, adult CCF residents may only be served with a 3-day eviction notice where it can be documented that the resident is a threat to himself/herself or others, and only if the licensing agency has approved the action in advance (or, at least with respect to ARFs, has failed to respond within two working days) and the facility can document such approval.

3. Further Notice Requirements

Section 80068.5 requires a facility, upon serving a client with a 30-day or 3-day notice to quit, on the same day, to overnight mail or fax a copy of the notice to the client's authorized representative, if any, or responsible person if there is no authorized representative. 22 C.C.R. § 80068.5(d). In addition, with regard to an SRF resident, a facility must mail a copy of any eviction notice to the client's mental health professional. 22 C.C.R. § 81068.5(d). The facility must also mail or fax a copy of any 30-day notice to the Department within five days of giving the notice to the client. 22 C.C.R. § 80068.5(e). Upon request of a client or his/her authorized representative or responsible person, the Department will investigate the reasons for the eviction, as provided. 22 C.C.R. 80068.5(f). Advocates should ensure that all notice requirements have been complied with and that the client is aware of his/her right to an investigation by the licensing agency.

4. Landlord/Tenant Remedies

Finally, the general licensing requirements state that "nothing in this section precludes the licensee or client from invoking any other available remedy." 22 C.C.R. § 80068.5(g). Chapter 6, which applies to ARFs, contains an identical provision. 22 C.C.R. § 85068.5(f). The analogous provision applicable to SRFs states, however, that "nothing in this section is intended to preclude the licensee or client from invoking other remedies when eviction is not appropriate." Although the wording of the latter provision is somewhat confusing, advocates should construe these provisions to mean that basic rights and remedies under California landlord/tenant law apply to CCF residents.

Moreover, state laws governing rental property apply to "all persons who hire dwelling units located within this state including tenants, lessees, boarders, lodgers, and others, however denominated." Cal. Civ. Code § 1940(a). Subdivision (b) of this section contains a list of exclusions, none of which could legitimately apply to CCFs. Nevertheless, a facility might still attempt to raise the argument that one of the exclusions does apply. Note, too, that this section further states that "nothing in this section shall be construed to limit the application of any provision of this chapter to tenancy in a dwelling unit unless the provision is so limited by its specific terms. This language is very broad and clearly applies to most conceivable types of tenancies and dwellings, including CCFs.

Since CCFs are covered by state landlord/tenant laws, the landlord may evict a tenant only by prevailing in an unlawful detainer action. The landlord may not engage in self-help remedies, such as locking the person out or removing his/her possessions.

II. Eviction Procedures in RCFEs

As mentioned above, Residential Care Facilities for the Elderly (RCFEs) are governed by separate regulations. Here, again, the first step in the analysis is to examine the client's admission agreement. RCFEs are required to complete and maintain written admission agreements with all persons admitted to the facility or with their designated representatives. 22 C.C.R. § 87568(a). The agreements must contain specified information, including "the actions, circumstances or conditions specified in section 87589 which may result in the resident's eviction from the facility." Section 87589 sets forth eviction procedures. 22 C.C.R. § 87568(b)(8). Further, "except for general policies developed pursuant to Section 87589(a)(3) [discussed below], the eviction process shall not be modified." *Id.* The agreement must also specify "other conditions under which the agreement may be terminated." 22 C.C.R. § 87568(b)(10). Thus, the grounds and procedures for eviction are explicitly stated in the regulations.

A. Admission Agreements

Similar but not identical to other facilities, the RCFE admission agreements shall be dated and signed by the person admitted and a representative of the RCFE no later than seven calendar days following admission. 22 C.C.R. § 87568(d). Attachments to the agreement may be utilized as long as they are also dated and signed. *Id.* The facility shall retain the agreement originals and provide copies to person admitted, or to their responsible person, to placement agencies, when appropriate, and to the resident's relatives who assisted with the placement. 22 C.C.R. § 87568(e). The facility shall comply with all terms and conditions set forth in the agreement. No written or oral contract with any other person shall release the facility from provision of safe and healthful facilities, equipment, and accommodations. 22 C.C.R. § 87568(g).

B. Eviction Procedures

1. 30-Day Notices

Section 87589 sets forth specific eviction procedures for RCFEs. It provides that an RCFE may evict a resident upon 30 days written notice only for one or more of the following reasons:

- (1) **Nonpayment of the rate for basic services within ten days of the due date.**
- (2) **Failure of the client to comply with state or local law after receiving written notice of the alleged violation.**

- (3) **Failure of the client to comply with general policies of the facility. Said general policies must be in writing, must be for the purpose of making it possible for the residents to live together and must be made part of the admission agreement.**
- (4) **If, after admission, it is determined that the resident has a need not previously identified and a reappraisal has been conducted, and the facility and the person who performs the reappraisal believe that the facility is not appropriate for the resident.**
- (5) **Change in use of the facility.**

2. 3-Day Notices

A facility can evict a resident upon 3 days written notice only upon obtaining prior written approval from the licensing agency. 22 C.C.R. § 87589(b). The licensing agency may grant approval for the eviction upon a finding of good cause. Good cause exists if the resident is engaging in behavior which is a threat to the mental and/or physical health or safety of himself/herself or to the mental and/or physical health or safety of others in the facility. *Id.*

3. Further Notice Requirements

In addition to serving 30 days notice or obtaining written approval from the Department and serving a 3-day notice on the resident, the facility is required to notify or mail a copy of the notice to quit to the resident's responsible person. 22 C.C.R. § 87589(c). The RCFE shall set forth in the notice the reasons relied upon for the eviction with specific facts to permit determination of the date, place, witnesses, and circumstances concerning those reasons. 22 C.C.R. § 87589(d). Upon the request of a resident or his/her designated representative, the Department shall investigate the reasons given for the eviction, as specified. 22 C.C.R. § 87589(e). A written report of any eviction shall be sent to the licensing agency within 5 days. 22 C.C.R. § 87589(f). Advocates should examine the notice to ensure that the resident is not being unlawfully evicted, and should inform clients of their right to an investigation by the licensing agency.

4. Additional Provisions

Two additional provisions apply to eviction of RCFE residents. The eviction procedures do not apply in the case of a resident who has entered into a life care contract with a facility, as specified. 22 C.C.R. § 87589(g). Also, nothing in section 87589 precludes a facility from initiating the urgent relocation to a licensed

health facility of a terminally ill resident receiving hospice services when the resident's condition has changed and a joint determination has been made by the Department, the resident or the resident's health care surrogate decision maker, the resident's hospice agency, a physician and the facility, that the resident's continued retention in the facility poses a health and safety risk to the resident or any other facility resident. 22 C.C.R. § 87589(i). In such an instance, the facility must follow specified procedures to reduce the risk of transfer trauma. 22 C.C.R. § 87589(i)(1).

5. Landlord/Tenant Remedies

As with adult CCFs, the RCFE regulations specify that "nothing in this [eviction procedures] section is intended to preclude the licensee or resident from invoking any other available remedy." 22 C.C.R. § 87589(h). It is imperative that advocates use this provision to prevent facilities from resorting to self-help remedies, such as lock-outs. Again, RCFE residents are tenants entitled to the full range of protections afforded under California law. To lawfully evict a resident, an RCFE must not only follow the procedures set forth above, but must also pursue an unlawful detainer action.

III. Eviction Procedures in Facilities for Children

The rights of children in CCFs differ slightly from those of adults and elderly persons. The regulations also differ slightly between group homes and small family homes. The above sections contained notations regarding what advocates should look for and suggestions on how to handle cases. These annotations, which would be similar in cases concerning children, were omitted here. Please refer to the above for such suggestions.

A. Admission/Intake Procedures

1. Small Family Homes

Small Family Home licensees must develop, maintain and implement admission procedures that meet certain requirements. 22 C.C.R. § 83068.1(a). Upon placement of a child, a licensee must request specified information, and complete and have signed an admission agreement in accordance with Section 80068 (see section I. A., Admission Agreements, pages 2-3, above). 22 C.C.R. § 83068.1(b)(1),(2)&(3). As soon as it is obtained, the licensee must review the required information and determine the licensee's ability to meet the child's individual needs, as well as the licensee's ability to simultaneously continue meeting the needs of other children and the licensee's family. 22 C.C.R. § 83068.1(c)(1)&(2). If it is determined that the home cannot meet the service needs of the child, the licensee must inform the child's authorized representative and request that the child be placed elsewhere. 22 C.C.R. § 83068.1(d)(A)&(B)[*sic.*].

2. Group Homes

Group Homes have two intake procedures, for emergency and non-emergency placements. When a child is being considered for non-emergency placement, the facility must obtain specified information regarding the child prior to the child's placement in the home. 22 C.C.R. § 84068.1(b)(1). Certain requests for information must be documented. 22 C.C.R. § 84068.1(b)(1)(A). When the information is received, social work staff shall complete a standard appraisal for the child on a form approved and/or furnished by the licensing agency. 22 C.C.R. § 84068.1(b)(1)(C). If the requested information is not received within 15 days of request, the facility shall obtain information necessary to complete the standard appraisal form from other sources. 22 C.C.R. § 84068.1(b)(1)(B). In addition, the home shall complete a needs and services plan, as provided (see section B. 2., page

11, below). 22 C.C.R. § 84068.1(b)(2). Both the standard appraisal form and the needs and services plan must be reviewed to determine if the facility can provide the services necessary to meet the child's needs. 22 C.C.R. § 84068.1(b)(3). If it is determined that the facility cannot provide the necessary services, applicable discharge procedures must be followed. C.C.R. § 84068.1(b)(3)(A).

If the child is accepted for placement, an admission agreement must be completed and signed as provided in § 80068 (see section I. A., Admission Agreements, pages 2-3, above). 22 C.C.R. § 84068.1(b)(4)(A). The facility administrator or his/her designee and the child and/or the child's authorized representative(s) shall sign copies of the removal and/or discharge policies and procedures (see section D. 2., pages 13-14, below), the discipline policies and procedures, and the complaint procedures to verify the receipt of such information. 22 C.C.R. § 84068.1(b)(4)(B).

If the child is placed in the facility under emergency circumstances, procedures set forth in the preceding paragraph shall be completed no later than seven days following placement. 22 C.C.R. § 84068.1(c)(2). If it is determined, following the child's emergency placement, that the facility cannot continue to provide necessary services, applicable discharge procedures must be followed. 22 C.C.R.

§ 84068.1(c)(3). If the child is continued in placement, requirements pertinent to the collection of information, review of the standard appraisal form and the needs and services plan, and any necessary modification to the admission agreement shall be met no later than 30 days following the emergency placement. 22 C.C.R. § 84068.1(c)(4), subds. (A),(B)&(C).

B. Needs and Services Plan

1. Small Family Homes

At the time of placement, a small family home licensee must request, from the child's authorized representative, a needs and services plan that describes the child's service needs, utilizing a form approved by the licensing agency. 22 C.C.R. § 83068.2(a)(1)&(2). The needs and services plan must contain specified information, including plans for providing services to meet identified individual needs. 22 C.C.R. § 83068.1(b). If the licensee is not given the child's record with the necessary information at the time of placement, the licensee shall request the information from the child's authorized representative and document such requests. 22 C.C.R. § 83068.1(c). If the requested information is not received within 15 calendar days, the licensee shall obtain an assessment of current service needs from other sources. 22 C.C.R. § 83068.1(c)(1).

2. Group Homes

Social work staff must obtain specified information about the child (pursuant to § 84070) and develop a needs and services plan that includes an identification of the child's needs and information regarding services necessary to meet those needs, as provided. 22 C.C.R. § 84068.2 subds. (a)-(c). Note that a needs and services plan is not required for children who are placed in the facility on an emergency basis and who will remain in placement for less than seven days. 22 C.C.R. § 84068.2(a)(1). The facility must ensure that the child and his/her authorized representative(s) are offered the opportunity to participate in the development of the needs and services plan. 22 C.C.R. § 84068.2(d). The facility may not implement a needs and services plan unless prior written approval of the plan has been obtained from the child's authorized representative(s). 22 C.C.R. § 84068.2(d)(1).

C. Modifications to Needs and Services Plan

1. Small Family Homes

The needs and services plan must be updated at least annually and, in addition:

- (1) as frequently as necessary to ensure accuracy and to document determination of a disability, and**
- (2) as frequently as determined necessary by the child's authorized representative. 22 C.C.R. § 83068.3(a)(1)&(2).**

The home must permit the participation of the child's authorized representative in modifications to the needs and services plan. 22 C.C.R. § 83068.3(c). Such participation shall be verified by his/her signature on the plan. 22 C.C.R. § 83068.3(c)(1).

If modifications to the plan identify unmet needs, it shall be determined whether the home has the ability to meet the child's needs. 22 C.C.R. § 83068.3(b)(1). If it is determined that the identified needs can be met, a written plan to meet those needs shall be developed and maintained in the home. 22 C.C.R. § 83068.3(b)(1)(A). If it is determined that the needs cannot be met, the home shall give notice to the child's authorized representative to remove the child from the home. 22 C.C.R. § 83068.3(b)(1)(B).

2. Group Homes

The needs and services plan must be updated at least every six months to determine the following:

- (1) The child's needs for continuing services.**

- (2) **The facility's recommendation regarding the feasibility of the child's return to his/her home, placement in another facility, or move to independent living.**
- (3) **The need for modification in services. 22 C.C.R. § 84068.3 subds. (a)(1),(2)&(3).**

The facility must ensure that the child and his/her authorized representative are offered the opportunity to participate in such modifications. 22 C.C.R.

§ 84068.3(b). The facility may not implement any plan modifications unless prior written approval has been obtained from the child's authorized representative(s). 22 C.C.R. § 84068.3(b)(1).

In order to determine the need to modify the child's needs and services plan, the facility must conduct an analysis, as provided, of each incident reported pursuant to Sections 80061 and 84061 which occurred in the six months preceding the biannual review of the plan. 22 C.C.R. § 84068.3(c). Sections 80061 and 84061 require reporting of various events, including injuries that require medical treatment, unusual incidents that threaten a child's physical or emotional health or safety, suspected physical or emotional abuse, placement in the facility under emergency circumstances, removal from the facility, or use of manual restraints, among other things. Additionally, the child's authorized representative shall be sent prior written notification regarding the need for nonemergency relocation of the child to another facility, including a satellite home. 22 C.C.R. § 84061(c).

D. Removal and/or Discharge Procedures

1. Small Family Homes

The regulations expressly applicable to small family homes do not contain specific removal or discharge procedures.

2. Group Homes

Group homes are required to develop, maintain and implement written policies and procedures governing a child's removal and/or discharge from the facility. 22 C.C.R. § 84068.4(a). The facility must ensure that the child and his/her authorized representative(s) are offered the opportunity to participate in the development of a discharge plan for the child. 22 C.C.R. § 84068.4(b). Children and their authorized representative(s) are to receive copies of such policies and procedures; signed copies are to be maintained in the child's record. 22 C.C.R. § 84068.4(a)(1)&(2).

A group home may not discharge a child unless prior written approval has been obtained from the child's authorized representative(s). 22 C.C.R. § 84068.4(b)(2). If it is determined that the facility cannot meet the needs of the child, the facility

must notify the authorized representative(s) and request that the child be placed elsewhere. 22 C.C.R. § 84068.4(c). Circumstances under which discharge might occur include the child reaching the age of 18, or meeting needs and service plan goals. DSS Manual of Policies and Procedures, Issue 867, § 84068.4(b)(1).

If it is determined that the child is to be removed or discharged from the facility, social work staff shall develop and maintain a written removal or discharge record containing the following information:

- (1) **The date on which the child's authorized representative(s) was notified of the necessity for the child's removal or discharge.**
- (2) **The name, address and relationship to the child of the person to whom the child was released.**
- (3) **The reason for the child's removal or discharge. 22 C.C.R. § 84068.4(e) & 22 C.C.R. § 84070, subds. (d)(1)-(3).**

A child may also be removed from a group home by an authorized person or agency under emergency circumstances. Examples of such circumstances include:

- (1) **Removal by law enforcement officers when a child is arrested or when removal is necessary because the health and safety of the child or of other children in the facility is endangered by the child's continued presence in the facility.**
- (2) **Removal for emergency medical or psychiatric care.**
- (3) **Relocation by the child's authorized representative(s). DSS Manual of Policies and Procedures, Issue 868, § 84068.4, subds. (d)(1)(A)-(C).**

This memo was prepared by Virginia Knowlton, Housing Advocate, as an introduction to the law governing Community Care Facilities and eviction. Please update and check all citations prior to using for advocacy purposes.