2007

Assisted Living Companion

An Easy-to-Use Guide to Assisted Living in California

Prepared by Attorneys of
BET TZEDEK LEGAL SERVICES
and the
NATIONAL SENIOR CITIZENS LAW CENTER

Assisted Living Companion

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Bet Tzedek Legal Services is a non-profit, public interest law center that provides free legal services to low-income residents of Los Angeles County. Bet Tzedek means "House of Justice" in Hebrew. Bet Tzedek serves persons of all racial, religious and ethnic backgrounds.

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Additional information and other publications can be found at Bet Tzedek's website, www.bettzedek.org.

The National Senior Citizens Law Center (NSCLC) is a non-profit law firm defending the interests of older Americans through nationwide advocacy and education. NSCLC's areas of expertise include assisted living, nursing homes, Medicaid, Medicare, Social Security, and other topics.

The NSCLC offices are located in Washington, D.C., and Los Angeles and Oakland, California. Because of its nationwide focus, NSCLC does not represent individual clients.

NSCLC writes publications for consumers and advocates. Information is available on the NSCLC website, www.nsclc.org.

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INTRODUCTION

Some persons are not physically or mentally able to continue living in their current homes. For these persons, assisted living facilities may offer the best available alternative. The ideal facility provides necessary assistance in a homelike environment.

Unfortunately, most people know virtually nothing about assisted living facilities until the need arises. For example, how does one identify a good facility? How can payments to a facility be managed? How can a resident of a facility ensure that he receives the best care possible?

This guide provides a good starting point in answering these and other significant questions. It should be used in conjunction with visits to assisted living facilities, discussions with knowledgeable individuals and, where necessary, consultations with a qualified attorney.

This guide is based almost exclusively on California law. If you reside in another state, most of this guide does not pertain to you. In addition, relevant laws change from year to year, so be sure that this is the most recent edition of the guide. Always consult local experts to supplement and verify the information contained in the following pages.

This guide has been prepared by Jody Spiegel, Director of the Nursing Home Advocacy Project of Bet Tzedek Legal Services, and Eric Carlson, an attorney in the Los Angeles office of the National Senior Citizens Law Center.

Bet Tzedek provides free legal services to residents of Los Angeles County in the greatest social or economic need. (Bet Tzedek means "House of Justice" in Hebrew.) Bet Tzedek's Nursing Home Advocacy Project protects the legal rights of the residents of nursing homes and assisted living facilities. For example, attorneys of the Nursing Home Advocacy Project represent clients in federal and state court, and in administrative hearings. In addition, attorneys of the Nursing Home Advocacy Project make frequent group presentations on topics related to long-term care. More information about Bet Tzedek, including its other publications, is available at www.bettzedek.org.

The National Senior Citizens Law Center ("NSCLC"), a nonprofit law firm founded in 1972, defends the interests of seniors through nationwide advocacy and education. NSCLC offices are located in Washington, D.C., and Los Angeles and Oakland, California. More information about NSCLC, including its other long-term care publications, is available at www.nsclc.org.

If you or someone you know would benefit from Bet Tzedek's services, please contact us at one of the addresses or telephone numbers listed below.

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Jody Spiegel is Director of the Nursing Home Advocacy Project at Bet Tzedek Legal Services, and specializes in the laws governing nursing homes and assisted living facilities. She counsels, advises, and litigates on behalf of facility residents and their families. She develops and promotes policies to improve the quality of care and quality of life for disabled and older adults through legal and legislative advocacy, community partnerships, and education. She also is a frequent lecturer to community and professional organizations, and the author of several publications for attorneys and consumers on long-term care laws and practices.

Eric Carlson

Eric Carlson, an attorney with the National Senior Citizens Law Center (NSCLC), has specialized in long-term care since 1990, and is one of the nation's leading consumer experts on nursing homes and assisted living facilities. He counsels attorneys from across the country in issues relating to long-term care, and also participates in litigation on residents' behalf. He speaks frequently to consumer groups, attorney audiences, and other groups. Mr. Carlson is the author of numerous publications and articles, including *The Baby Boomer's Guide to Nursing Home Care* (with co-author Katharine Hsaio).

Important Note: This assisted living guide is based almost exclusively on California law. It is intended for use by California residents, although some aspects may be applicable in other states. This guide is not a substitute for the independent judgment and skills of an attorney or other professional. If you require legal or other expert advice, please consult a competent professional in your geographic area to supplement and verify the information contained in this guide.

FINDING A FACILITY

What is an assisted living facility?

An assisted living facility is a residence for older persons that provides extensive services along with room and board. These facilities are sometimes referred to as retirement homes, rest homes, or board and care homes. California law refers to these facilities as "residential care facilities for the elderly," which is the term used in facility licenses.

An assisted living facility provides its residents with a room, meals, and activities. If necessary, an assisted living facility will assist its residents in activities of daily living (eating, bathing, dressing, using the toilet, etc.). If a resident is vulnerable, an assisted living facility also will monitor her to a certain extent to protect her from potential harm.

Residents often are able, without assistance, to perform most activities of daily living—but not necessarily. Increasingly, assisted living facilities are admitting and retaining persons with substantial physical limitations. If, for example, an assisted living facility meets fire safety standards, it may admit or retain persons who need help getting in or out of bed.

An assisted living facility is not required to have either nurses or doctors on staff. A small number of assisted living facilities choose to have on-site nurses. By making nursing services available, these facilities are able to admit persons with significant health care needs.

Although few assisted living facilities have on-site nurses, nursing services at facilities are commonly available through home health agencies, and usually paid for through the resident's Medicare coverage. The agency sends a nurse or nurse aide to the facility, the same way that the agency would send someone to help a person in a private home. The agency is hired by the resident, not by the facility, although many facilities will steer residents to a particular agency.

Assisted living facilities are licensed and inspected by the Community Care Licensing Division of the California

DEFINITIONS

Assisted Living Facility

(licensed as Residential Care Facility for the Elderly)

- Generally for residents at least 60 years old
- Non-medical care, but in some instances, limited health care services provided by nurses and other health professionals
- Room and board, plus care and supervision

Nursing Home

- For residents of any age who need on-site nursing care
- Medical care
- Room and board, plus 24-hour nursing care

Department of Social Services. Consistent with state law, the Department of Social Services refers to assisted living facilities as "residential care facilities for the elderly."

How does an assisted living facility differ from a nursing home?

An assisted living facility generally does not have doctors, nurses or nurse aides on staff. When health care is provided, it most frequently is provided by visiting nurses or aides sent from a home health agency.

A nursing home, on the other hand, has nursing staff present around the clock. Specifically, the staff of nursing homes includes registered nurses and nurse aides. In addition, nursing homes must have easy access to doctors and must hire a doctor to act as a medical director. A doctor must visit each resident at least once every 30 days.

Nursing homes are licensed by the California Department of Health Services. As discussed above, assisted living facilities are licensed by the California Department of Social Services.

Nursing home residents are comparatively more dependent than assisted living residents. Nursing home residents often cannot walk unassisted, and generally need help with their daily activities. Nursing home residents also may have suffered substantial memory loss.

In general, nursing home residents have greater needs than assisted living

residents. Increasingly, however, assisted living facilities are becoming more and more like nursing homes. In recent years, assisted living facilities have admitted many older persons with serious health conditions. An assisted living facility now can accept and retain a resident who needs significant nursing care, as long as the nursing care is performed by an "appropriately skilled professional." This "appropriately skilled professional"

may be a facility employee or (as discussed on page four) provided through a home health agency.

Comprehensive information about nursing homes is available in the *Nursing Home Companion,* Bet Tzedek's consumer guide to nursing home laws and practices. An order form for the *Nursing Home Companion* is located on page 78 of this guide. It also is available for download at www.bettzedek.org.

Additional information about nursing homes also is available from two publications of the National Senior Citizens Law Center: *The Baby Boomer's Guide to Nursing Home Care* and *20 Common Nursing Home Problems—and How to Resolve Them.* Both of these publications are available at www.nsclc.org, and *The Baby Boomer's Guide to Nursing Home Care* also is available through bookstores and Internet booksellers. An order form is located on page 79 of this guide.

What is assisted living?

In California, "assisted living" is a marketing term, not a legal term, and has no precise definition. Assisted living generally refers to a broad spectrum of facilities that provide care and supervision to residents, but are not nursing homes.

This guide uses the term "assisted living facility," rather than the legal term

ADVICE!

A facility might refer to itself as "assisted living" even if it does not have a license, and provides few or no services.

"residential care facility for the elderly," because "assisted living facility" is the term used most commonly by the general public.

Is a retirement home the same as an assisted living facility?

Maybe. In many instances, "retirement hotels" or "retirement homes" are licensed to provide what this guide refers to as assisted living care. As discussed on pages 4–5, the licensure category in California is actually called "residential care facility for the elderly."

In some cases, "retirement hotels" or "retirement homes" are not licensed in any way, because these "hotels" or "homes" do not provide care or supervision.

Licensing information for particular facilities can be obtained by calling the California Department of Social Services at the telephone numbers listed on pages 76–77 of this guide.

Do assisted living facilities provide residents with private rooms?

Not necessarily. Private rooms often are available in an assisted living facility, but a resident likely will receive a private room only if he pays a higher monthly rate.

A greater availability of private rooms is one advantage of assisted living facilities compared to nursing homes. In many assisted living facilities, the living unit is similar to a private apartment. In nursing homes, most of the rooms are shared with at least one other resident, and the rooms almost always have the feel of a health care institution rather than a residence.

OTHER COMMON TERMS FOR ASSISTED LIVING:

- Board and Care
- Residential Care Facility for the Elderly
- Rest Home
- Retirement Home
- Retirement Hotel

Don't make any decisions based on a facility's name. A name is chosen by the facility for its potential attractiveness to consumers. The facility's name does not indicate anything about its quality or capabilities.

Can an assisted living facility admit a person who has medical needs?

Yes, under certain conditions. In recent years, the law has changed to allow assisted living facilities to admit some persons who have significant medical needs. Unfortunately, as explained later in this guide, the laws pertaining to quality of care have not kept pace with the relaxation of the admission standards. Too frequently,

relevant law does little to protect residents who have serious medical needs.

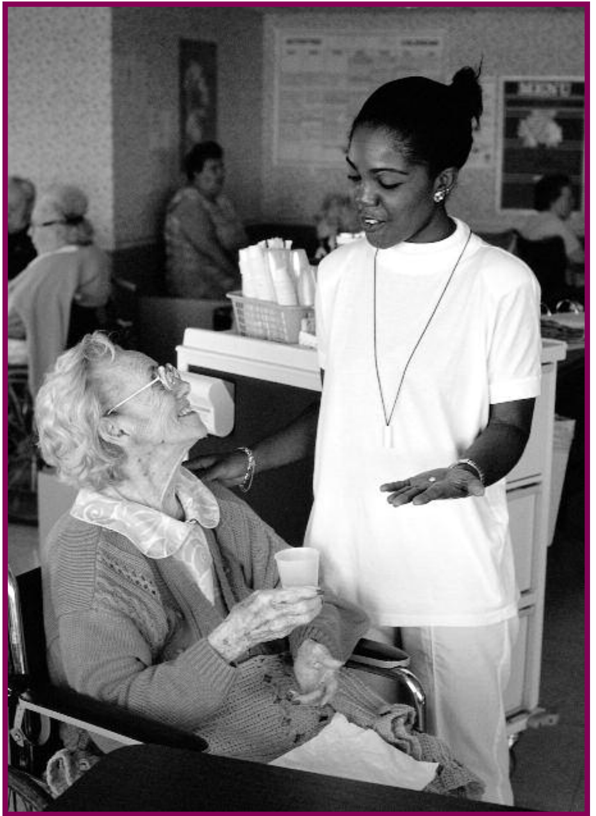
Residents Who Cannot Walk or Turn in Bed

If an assisted living resident cannot walk without assistance, she is considered "nonambulatory" and must reside in a room that has been approved for "nonambulatory" use by the local fire authority. A "nonambulatory" room often is located on the first floor near an exit, so that the resident can be moved easily out of the facility in case of a fire or other emergency.

A relatively new law has given assisted living facilities an increased ability to admit residents who are unable to turn themselves in bed. Under guidelines issued by the state, a facility must obtain the state's permission before admitting a resident who cannot turn herself, and also must obtain a bedridden fire clearance from the local fire authority. Additionally, all facility employees providing direct care to the bedridden resident must receive training from a health care professional. The training must include standard procedures to re-position the resident at least once every two hours around the clock to prevent the development of pressure ulcers.

Residents Who Need Help in Taking Medications

California law requires that medication be administered by nurses, but most assisted living facilities do not have



nurses on staff. Accordingly, state regulations provide that an assisted living resident must be able to "self-administer" his medication. However, many residents have dementia or a similar illness and, as a result, are not able to take medication independently. This creates a dilemma: how can assisted living residents take their medication if they are not able to "self-administer" it?

The answer: lax enforcement of the regulation requiring that residents be able to "self-administer" their medication. In reality, virtually all facilities administer medications to at least some of their residents. To avoid application of the law, many facilities that administer medications to residents take the position

that they merely "store" medication for their residents to "self-administer." And, the argument goes, when facility employees give medication to residents, they are simply taking the medication out of storage, not administering it.

This practice has dangerous consequences for assisted living care in California. Because enforcement of the law is weak, there are very few standards for persons who handle medications in assisted living facilities. As a result, a resident may be given strong medication by a facility employee with little or no medical training.

Beginning on January 1, 2008, however, a new law will require each employee who assists residents with the self-administration of medications to complete specified training requirements. The requirements include 16 hours of initial training in facilities for 16 or more persons, and six hours of initial training in facilities for 15 or fewer persons. The employees also will have to pass an examination and complete four hours of training on medication-related issues each subsequent year.

Residents Who Need Regular Medical Care

Under certain circumstances, state regulations allow for "incidental medical services" to be provided in an assisted living facility. For example, a facility may be allowed to admit residents who require injections, oxygen administration or catheters, or who suffer from diabetes or contractures.

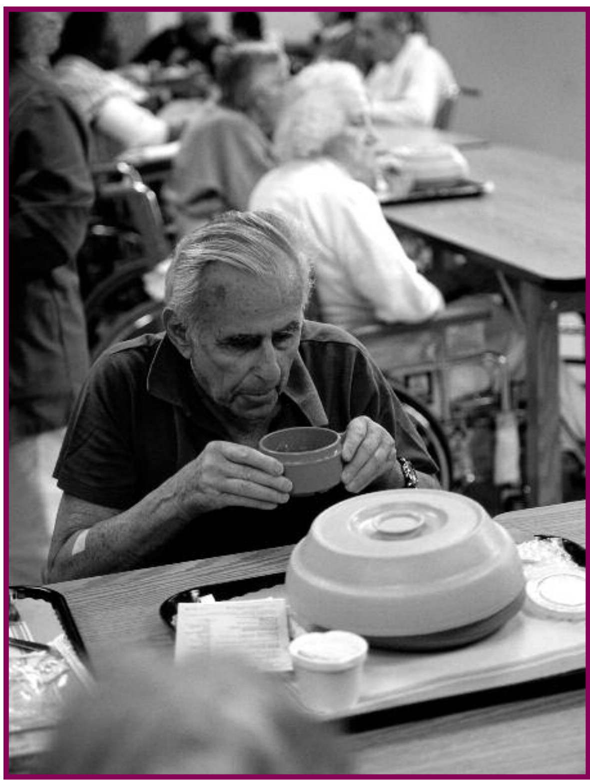
EXAMPLES OF MEDICAL SERVICES THAT ASSISTED LIVING FACILITIES MAY PROVIDE:

- Oxygen Administration
- Colostomy Care
- Enema
- Removal of Fecal Impaction
- Catheter Care
- Care for Contractures
- Diabetes Care
- Injections
- Care for Stage 1 or 2 Pressure Ulcer

In general, the regulations allow for certain medical procedures to be performed at the facility if either:

- the resident can perform the medical procedures without any help, or
- the facility can provide the necessary care and supervision for the medical procedure to be performed by an "appropriately skilled professional."

In most instances, the appropriately skilled professional is a nurse or nurse aide supplied by a home health agency and paid through the resident's Medicare coverage. A home health agency can



provide incidental medical care on behalf of an assisted living facility as long as there is an adequate agreement between the home health agency and the facility, and the facility is capable of providing care and supervision.

Current regulations may provide inadequate protection to residents. The regulations set few specific requirements for the provision of incidental medical services. Many decisions are left to the local offices of the Department of Social Services, which too frequently allow substandard facilities to admit persons who need significant medical services.

In addition, state regulations do not address the issues raised by the employment of nurses and nurse aides in facilities that supposedly are non-medical. If an assisted living facility consistently has nurses and nurse aides caring for residents, should the facility at some point be required to obtain a nursing home license? Current regulations provide no answer.

Can an assisted living facility admit a person who has mental or emotional limitations?

Yes, depending upon the severity of the person's condition. A facility cannot admit a person whose behavior would upset the general resident group or require extraordinary care.

In some instances, a person's mental or emotional condition requires special arrangements. If a person is mentally unable to respond to emergency signals, he is considered "nonambulatory" and

ADVICE!

Don't assume that a facility with a dementia specialization is better equipped to care for residents with dementia. State standards for specialization are relatively limited. Look at the facility's plan for dementia care and ask appropriate questions.

must live in a room which has been approved for "nonambulatory" use by the local fire authority. If a resident suffers from Alzheimer's disease or a similar condition, he may benefit from living in a facility that provides specialized care for persons with dementia, in addition to the "nonambulatory" rooms described above.

An assisted living facility may or may not provide specialized care for persons with dementia. However, if the facility advertises or promotes that it provides specialized dementia care, all of the facility's direct care staff must meet certain dementia care training requirements. The facility also must prepare a written plan describing the special features of its dementia care, and provide the plan to the public upon request.

How can a prospective resident choose among residential care facilities?

The following paragraphs discuss some relevant considerations.

License

The prospective resident or family members should make sure that the facility is licensed. A facility is operating illegally if it provides care and supervision to residents without a proper license. Furthermore, if the facility has no license, no government agency monitors the care provided.

Licensing information for particular facilities can be obtained by calling the Department of Social Services' telephone numbers listed on pages 76–77 of this guide.

Location

If possible, an assisted living facility should be located near a resident's family members and friends. Residents with frequent visitors generally fare better (physically and emotionally) than residents without visitors.

As for neighborhoods, generally quieter is better. Of course, there are exceptions; for example, some persons may prefer a facility within easy walking distance to stores or restaurants, and won't mind if the facility is on a busy street.

Prospective residents and their families shouldn't be overly impressed by the neighborhood in which a facility is located. A good facility may be located in an undesirable neighborhood and vice versa.

Visiting to Determine Quality of Care

The prospective resident and her family members should visit each assisted living facility under consideration, and then carefully look, listen, and smell. Are the residents up and dressed, and engaging in activities? Is the general atmosphere warm, pleasant, and cheerful? Do residents look well groomed? Does the staff treat residents with respect?

The prospective resident and family members should talk to current residents and their visitors. The residents and visitors should know better than anyone else the facility's pluses and minuses.

The prospective resident and family members should visit during mealtimes. Is food delivered hot? Are residents promptly assisted if they need help with eating, or does food sit and cool on trays?

If possible, the prospective resident and family members should visit a facility on a weekday, during a weekend, and at night. The prospective resident and family members should assure that residents' needs are met during the weekends and nights, when many facilities maintain a smaller staff.

The focus should be on the facility's services rather than the attractiveness of the facility itself. Some facilities have lavish furnishings (particularly in the lobby) but show little interest in the well being of their residents.

Of course, a facility's appearance has some significance. Particularly important are residents' rooms. If residents can furnish and decorate their own rooms, the facility will feel more like a home. If, on the other hand, all rooms have the same institutional decor, residents are more likely to feel depressed and/or dissatisfied.

Questions for Facility Staff Members

It's hard to ask questions if you don't know what you want. In situations like this, the salesperson tends to have the upper hand. Since the consumer may not know which questions to ask, the salesperson feels free to present a sales pitch about services that may not be important.

A person looking for an assisted living facility should think of what she would

want or appreciate, and then ask facility staff whether the facility can meet her requests. Assume, for example, that a prospective resident wants to be able to invite friends for a long-standing card game on Tuesday afternoons, or needs assistance for a daily walk around the block. The facility's response to these requests will be helpful in two ways. First, and most obviously, the response will let the prospective resident know whether the facility can meet her request. Second, the response will give the prospective resident a good idea of the facility's attitude towards residents and residents' requests. If the facility seems willing to meet individual requests, it's a good sign. On the other hand, if the facility staff seems hostile to or baffled by an individual request, the prospective resident probably is better off looking at other facilities.

In addition to questions about personal needs and preferences, the resident or family members should ask more general questions about how the facility operates—for example, who at the facility is responsible for certain tasks, and who will respond to complaints?

Information about staff training and turnover is extremely important. Better facilities will provide meaningful training for direct-care staff, and will have employees who have been at the facility for several years.

The prospective resident or family members should ask about the training provided for direct-care employees. State regulations set a very low minimum—only ten hours of initial training, and four hours of annual continuing education. Training at a better facility will exceed the state minimum.

> **ADVICE!**
>
> Ask for what you want! There's no better way to find out whether a facility will be willing to meet your needs and preferences.

Annual staff turnover rates of 100% or higher are typical for direct-care staff due to the difficulty of the jobs and the generally low wages. The prospective resident or family members should ask how long various staff members have been working at the facility. It is a good sign if employees have been at the facility for years rather than just months.

Limits of Facility's Care

An extremely important issue is the type of care that a facility does not intend to make available. As discussed previously in this chapter, state regulations allow a wide array of medical services to be provided at an assisted living facility. However, in many cases, the regulations do not require that those services be made available.

Prospective residents and their family members often assume wrongly that a resident will be allowed to stay in an assisted living facility for the rest of her life, or at least until she becomes extremely ill. This assumption may be true in some facilities, but often is false. From facility to

facility, there is a wide variation in the types of care that are made available.

As discussed in this guide's Preventing Eviction chapter on pages 50–51, a facility can base an eviction on its inability to meet a resident's changed needs. However, a facility's refusal to make available a certain type of care can be attacked as illegally discriminatory under the Americans with Disabilities Act. In refusing to retain a resident with a certain medical condition, an assisted living facility may be discriminating illegally based on the resident's condition. This refusal may be challengeable in court.

At admission, of course, the goal is to avoid future disputes and litigation. To this end, a prospective resident or her family members should ask specific questions of facility staff about the types of care that the facility will or will not make available. If, for example, the prospective resident is becoming unsteady on her feet, she should ask about the facility's ability to provide care for residents who need assistance walking or getting in and out of bed.

Ideally, the admission agreement will explain clearly what types of care can and cannot be provided at the facility. Alternatively, a prospective resident or family member can ask the facility for a separate list.

Administrators and Admission Coordinators

In a small facility (e.g., with six or fewer residents), the facility's administrator may also be the admissions coordinator and cook, and may provide much of the care. Questions will be addressed to him out of necessity, because there are few other staff members.

A larger facility, however, likely will have a full-time admissions coordinator or marketing director. This will be the staff member who will come forward to meet and greet prospective residents.

In a larger facility, the prospective resident or family members should address questions to the admissions/marketing employee, but also should ask to speak with the employee responsible for day-to-day resident care. This employee may be the administrator or may have some other title. She will know more than the admissions/marketing employee about how the facility operates, and it is her attitude that likely sets the tone for the rest of the staff.

Fire Safety

In general, assisted living buildings are not well constructed for fire control. Most assisted living buildings were built

when fire safety construction standards were weaker than they are now.

Prospective residents or their family members should ask about fire safety. A minority of facilities have installed sprinkler systems. Others are built with doors and walls designed to protect occupants from fire until the fire department arrives.

Examining Official Records to Determine Quality of Care

The prospective resident or her family members should examine the assisted living facility inspection records maintained by the Department of Social Services. The inspection records summarize the findings of all inspections conducted at each assisted living facility by the state. The inspection records also note any money penalties imposed against an assisted living facility in response to particularly blameworthy conditions.

All inspection records relating to a particular assisted living facility, and created on or after January 1, 1999, must be made available immediately upon request at the appropriate district office of the Department of Social Services. Each district office telephone number is listed on pages 76–77 of this guide.

In addition, certain state records must be made available at the assisted living facility itself. Each facility must place in a conspicuous place the following two categories of inspection records: (1) all records from the most recent annual inspection visit; and (2) all records from the previous twelve months in which a complaint against the facility was verified by an inspector. Thus, prospective residents of an assisted living facility may obtain some (but not all) inspection records directly from the facility, without visiting the local state office.

> **ADVICE!**
>
> Before admission to a facility, ask about the types of care that the facility can and cannot provide.

Unfortunately, inspection records are not available on the Internet. The website of the Department of Social Services has only a minimal amount of information. For each facility, the website lists only the address, telephone number, and maximum number of residents, along with contact information for the appropriate office of the Department of Social Services (www.ccld.ca.gov/docs/ccld_search/ccld_search.aspx).

Admission Agreement

The prospective resident or his family members should examine and consider the admission agreement used by each assisted living facility. As discussed in this guide's Admission chapter on pages 27–29, some admission agreements contain provisions harmful to residents and families. As also discussed in the same chapter on pages 29–31, some admission agreements provide for lifetime care and must be scrutinized with particular caution.

Upon request by any person, an assisted living facility must provide a blank copy of its admission agreement. The facility is allowed to charge for any copying or mailing costs. Also, each facility must post either a copy of the admission agreement or a notice of the agreement's availability.

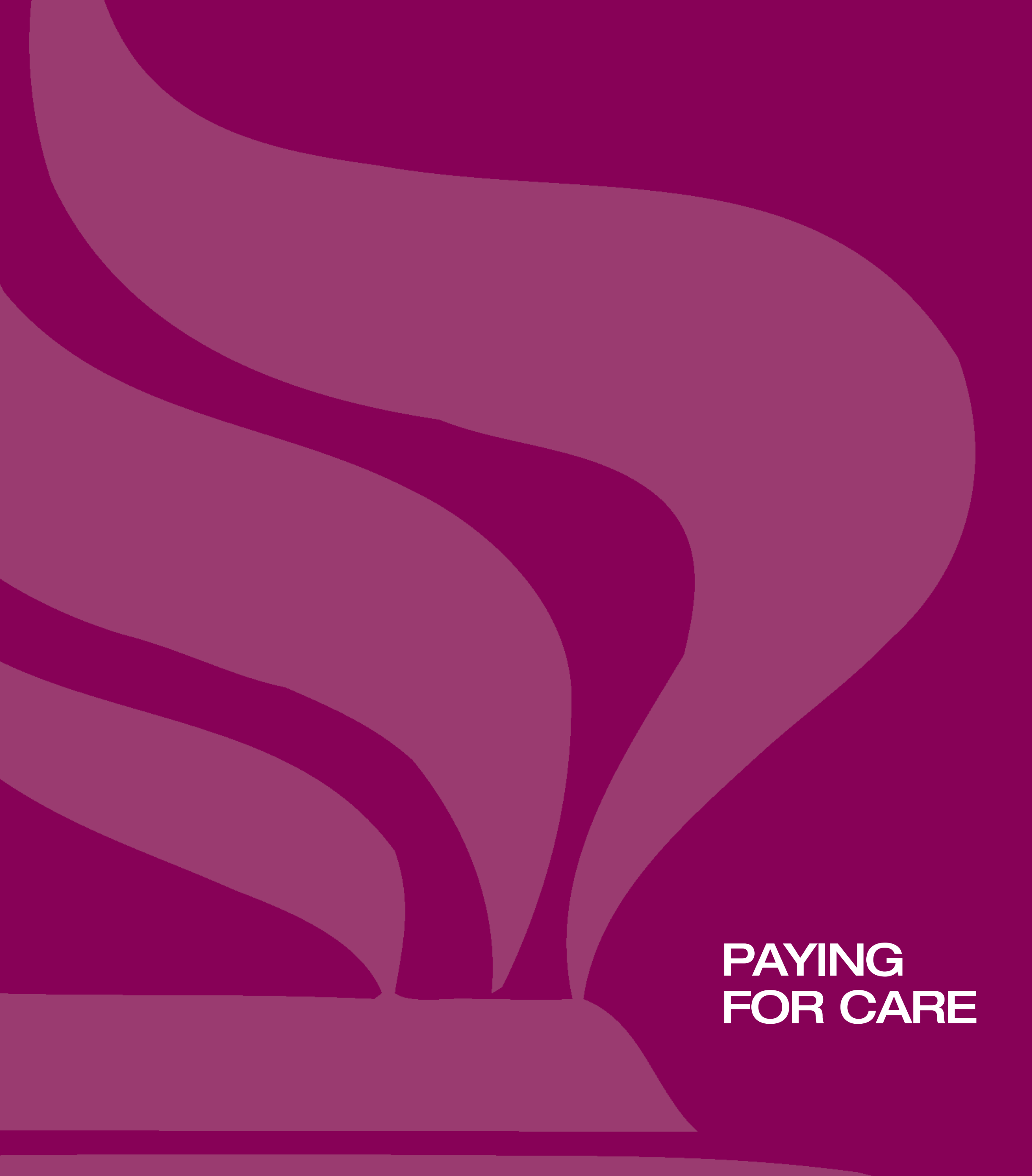
Can a professional person be hired to find a placement in an assisted living facility?

Yes. Some social workers and care managers will assist a prospective resident and his family members in finding an assisted living facility. Details can be obtained from a local senior center or a private care management service.

Private referral services also assist prospective residents and their family members in finding assisted living facilities, although the quality of the referral services varies greatly. In general, the referral services provide inconsistent results because the services may see a facility (rather than the prospective resident) as the primary client.

Consequently, prospective residents should not automatically rely on a referral or placement service. Some services may work solely from out-of-date lists, and may know less than the prospective resident. Additionally, some services may receive money from facilities for each resident whom the services place in those particular facilities. These services should be used with caution: they have an incentive to place a prospective resident in a facility that will pay them, although that facility may not necessarily provide good care.

This discussion on finding an assisted living facility is based primarily on the California Health and Safety Code, sections 1569.2(1), 1569.38, 1569.44 through 1569.46, 1569.61, 1569.627, 1569.628, 1569.69 through 1569.697, 1569.699, 1569.72, 1569.725, 1569.881, and 13131; Title 22 of the California Code of Regulations, sections 87101(r)(2), 87105, 87106, 87582 (c)(4), and 87700 through 87724; Community Care Licensing Division, Summary and Implementation Plans, 2000 Chaptered Legislation, Residential Care Facilities for the Elderly; Community Care Licensing Division Provider Memorandum, December 15, 1992; and an October 31, 2001 letter from Lawrence B. Bolton, California Department of Social Services, to Michael Stortz, Protection & Advocacy, Inc.



PAYING FOR CARE

While assisted living generally is less expensive than nursing home care, the monthly rates vary dramatically and depend upon a variety of factors. The majority of California assisted living residents pay privately for their care. Medicare and Medi-Cal funding of services at assisted living facilities is very limited.

How much does a stay in an assisted living facility cost?

California assisted living facilities charge from $900 to $6,000+ monthly, depending on location, accommodations, services and other factors. In 2006, for example, the monthly base rate for facilities in Los Angeles ranged from $1,300 to $4,800, and the average monthly base rate was $2,426.

Do any government programs help a resident pay for his care?

Yes, limited assistance is available for low-income persons. If a facility resident qualifies for Supplemental Security Income (SSI), a state regulation limits the facility's monthly charge. Additionally, Medi-Cal has a limited program that will pay for assisted living services for approximately 1,000 residents in certain facilities in Los Angeles, Sacramento, and San Joaquin counties. Finally, Medicare and Medi-Cal may pay for certain health care services provided at facilities.

What is SSI?

Supplemental Security Income (SSI) is a joint federal and state program that guarantees a minimum monthly income for persons who are elderly or disabled, and have limited income and resources. SSI is administered by the Social Security Administration.

When is a single person eligible for SSI?

A single person is eligible for SSI if she is at least 65 years old or disabled, and has less than $2,000 in available resources. (Availability of resources is discussed on page 21 of this chapter.)

In addition, the single person must have a limited income. If this person is living in an assisted living facility, she must have a monthly income of less than $1,055 to be eligible for SSI. (The income amounts quoted in this chapter are effective January 1, 2007, and will be increased slightly at the beginning of subsequent years.)

How does the SSI program help a resident pay for his stay in an assisted living facility?

If an assisted living resident receives no income aside from SSI, the SSI program will guarantee the resident a total monthly income of at least $1,035. Of that $1,035, the resident generally must pay $916 monthly to the facility. The resident may keep the remaining $119 as a monthly allowance.

? WHERE DOES A RESIDENT'S SSI CHECK GO?

Income from SSI	$1,035
Payment to facility	$916
Resident keeps as monthly allowance	$119

If a resident receives SSI as a supplement to other income, his total monthly income (SSI plus the other source of income) generally will increase by $20 to $1,055. In this instance, the resident may keep a monthly allowance of $119 or $139, depending on whether the admission agreement requires the resident to pay the "extra" $20 to the facility.

Remember that the SSI program has very strict income requirements. If a resident's monthly income exceeds the SSI monthly income limit—currently $1,055—the resident cannot receive SSI, even if he has no savings. Unlike Medi-Cal, the SSI program does not allow over-income persons to become eligible by spending their "extra" income.

Can an assisted living facility charge an SSI recipient more than the basic SSI monthly rate?

In general, no. State regulations prohibit assisted living facilities from charging an SSI recipient more than the basic SSI rate of $916 monthly.

Nonetheless, a facility may be able to charge an SSI recipient an extra $20 monthly if (1) the SSI recipient receives SSI as a supplement to other income and thus receives an additional $20 in total monthly income, and (2) the resident knowingly agrees in a written admission agreement to pay the extra $20 to the facility each month.

In addition, a facility can charge an SSI recipient an extra $44.40 monthly for a private room if the resident chooses in a written admission agreement to take a private room rather than an available double room.

?

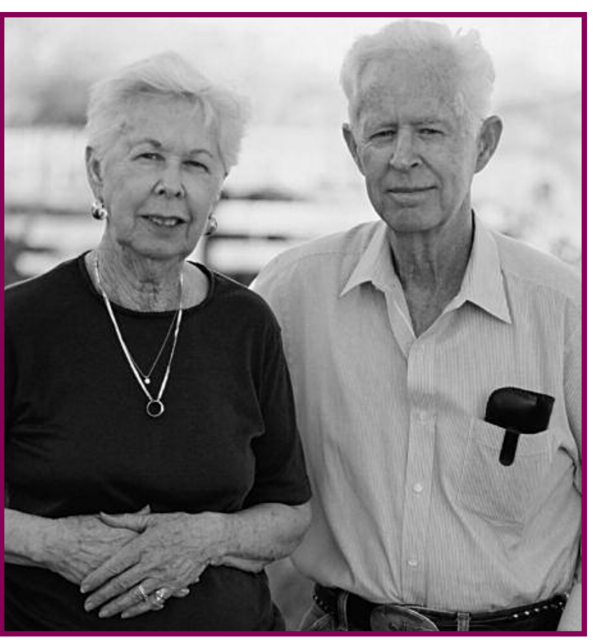
Q: I first paid privately for my rent at an assisted living facility, but now I have become eligible for SSI. Can the facility charge me the rate that I used to pay before I became eligible for SSI?

A: No, an assisted living facility cannot charge an SSI recipient more than the basic SSI rate even if in the past, when the resident was not SSI-eligible, the resident paid a higher rate. For more information, see page 50.

Can the family of an SSI-eligible resident be required to make a supplemental payment to the facility each month?

No. As explained above, an assisted living facility generally cannot charge an SSI-eligible resident more than the basic SSI monthly rate. Regardless, a family member of the resident can make a voluntary contribution to the facility, if the family member wishes to do so.

Unfortunately, these "voluntary contributions" have become less unusual in recent years. Since the SSI rate is so low, fewer and fewer facilities will admit persons eligible for SSI. Yet, the state has been unwilling to increase the SSI rate to an adequate level. Instead, in response to the facilities' complaints, the Department of Social Services has modified regulations to explicitly state that a family member of an SSI-eligible resident is not prohibited from making a "voluntary contribution" to the resident's facility.



By modifying the regulations, the Department of Social Services has encouraged facilities to pressure family members into making extra payments to the facilities. A resident's family member should resist pressure from a facility to make an extra "contribution," unless the family member truly wishes to do so. If for some reason a contribution is appropriate, the contribution must be designated for services other than food or shelter. Otherwise, the contribution could be seen as payment towards the resident's food or shelter, and lead to a reduction in the amount of the resident's monthly payment from SSI.

If a husband and wife live together in an assisted living facility, when are they eligible for SSI?

When both a husband and a wife are admitted into an assisted living facility, the couple is eligible for SSI if (1) both spouses are either at least 65 years old or disabled, (2) the couple together has less than $3,000 in available resources, and (3) the couple together has a total monthly income of less than $2,090.

Once the couple has resided together in the facility for at least six consecutive

months, the SSI program treats each spouse as an eligible individual rather than as part of an eligible couple.

If a married resident lives in an assisted living facility, but his spouse lives at home, when is the resident eligible for SSI?

Federal regulations and SSI guidelines both state that spouses living apart must be treated by the SSI program as single individuals. Consequently, the SSI-eligibility of a married resident in an assisted living facility can be determined with only limited reference to the resources and income of a spouse who does not live in the facility. Such a separate determination, however, requires that the couple clearly document that the resident has no access to the other spouse's resources or income.

✻ ADVICE!

A house is not counted as a resource by SSI if an assisted living resident says that she intends to return to it.

What resources are not counted by the SSI program?

As described on page 18, the SSI program only makes payments to persons or couples with limited resources. Resources include money, bank accounts, real estate, investments, and other items.

The SSI program, however, considers many resources unavailable and will not count those resources against the applicable resource limit. For example, the value of a house is considered unavailable if the house is the applicant's principal residence. Furthermore, the house is considered an unavailable principal residence even if the applicant is living in an assisted living facility; the SSI program will disregard the house's value if the applicant simply states on her SSI application that she intends to return to the house in the future.

Other resources considered unavailable include: a necessary automobile, household goods, personal effects, and burial spaces. Life insurance policies and burial funds are considered unavailable only if the value of the policy or fund does not exceed $1,500.

Do the Medicare or Medi-Cal programs pay for a stay in an assisted living facility?

In general, no. However, the Medi-Cal program in 2006 began a three-year demonstration project, the Assisted Living Waiver Pilot Project (ALWPP), to test whether assisted living as a Medi-Cal benefit could be an effective alternative to nursing home placement. Under the ALWPP, Medi-Cal will pay for qualified persons to receive services in qualified assisted living facilities in Los Angeles, Sacramento, and San Joaquin counties.

To be eligible for the ALWPP, a person must be enrolled in Medi-Cal, need the level of care provided in a nursing home, and be willing to reside in a participating assisted living facility. If a person meets both the financial and health requirements, then he can choose to enroll in the ALWPP as an alternative to nursing home care. For more information regarding the ALWPP, see www.californiaassistedliving.org.

Additionally, the Medicare or Medi-Cal programs can pay for certain health care services provided in an assisted living facility by licensed health care professionals. Generally these services are provided through an outside agency—a home health agency or, in the case of a terminally ill resident, a hospice agency. Medi-Cal recipients also may be able to get care management, transportation, personal hygiene and other services at an assisted living facility under the Multipurpose Senior Service Program (MSSP) waiver administered by the California Department of Aging.

Does the amount of a resident's payment to an assisted living facility affect her Medi-Cal share of cost?

Yes. The resident's payment to an assisted living facility is taken into account in the calculation of the Medi-Cal monthly deductible, called the "share of cost."

As of the writing of this guide (January 2007), medical services are provided with no share of cost if a single Medi-Cal recipient has a monthly income of no more than $1,067. (The eligibility levels for this program are usually established in April, and increase slightly each year.) In determining the income that must be paid as a share of cost, Medi-Cal allows a person to deduct the cost of his health care premiums. Thus, a Medi-Cal recipient whose income is slightly above $1,067 may

ADVICE!

A person whose income is slightly more than $1,067 per month can purchase dental or vision insurance, and deduct the cost of the premiums from her monthly income to qualify for no-share-of-cost Medi-Cal.

? HOW TO CALCULATE MEDI-CAL SHARE OF COST

Monthly Income	Monthly Facility Fee	Share of Cost
Less than or Equal to $1,067	Any amount	$0
Greater than $1,067	Less than $916	Monthly Income – $935
Greater than $1,067	Greater than or equal to $916	Monthly Income– Monthly Facility Fee – $20

wish to consider purchasing additional health insurance (medical, dental or vision) to reduce his income so that he may qualify for no-share-of-cost Medi-Cal.

Facility residents with a monthly income of more than $1,067 generally will have a Medi-Cal share of cost that equals the amount by which their monthly income exceeds the current maintenance allowance of $935. If, however, the resident pays a monthly facility fee of $916 or more, the share of cost will be the difference between the monthly income and the facility's monthly fee, minus an additional $20.

For example, assume that a resident has a monthly income of $1,100. In general, he will have a monthly Medi-Cal share of cost of $165 ($1,100 – $935 = $165). If, however, the facility costs $1,000 monthly, the resident's share of cost would be reduced to $80 ($1,100 – $1,000 – $20 = $80).

This discussion on paying for care is based primarily on Title 42 of the United States Code, section 1382b(a); Title 20 of the Code of Federal Regulations, sections 416.1102, 416.1103, 416.11 12(c)(3), 416.1124(c)(12), 416.1132, 416.1145, 416.1160 through 416.1163, 416.1202, and 416.1212 through 416.1231; California Welfare and Institutions Code, sections 11006.9 and 12200; Title 22 of the California Code of Regulations, sections 50515(a)(3), 50549.2, 50555.2, 50603, 85060(a), 87568(b)(3)(A), and 87590(e); Social Security Program Operations Manual System, sections SI 01140.205, SI 01320.450, and SI 01330.100; SSI/SSP Payment Standards (2002); Social Security Practice Guide, Supplemental Security Income, sections 25.17 and 25.19 (Matthew Bender); the California Department of Health Services All County Welfare Directors Letter #00-56; and a May 9, 1989 letter from William Jordan, California Department of Social Services, to Michael Parks, Bet Tzedek Legal Services; and the MetLife Market Survey of Assisted Living Costs, October 2006.

ADMISSION

How must an assisted living facility prepare for the admission of a prospective resident?

Before a prospective resident is admitted, the facility's admissions coordinator must meet with the prospective resident. The admissions coordinator must provide sufficient information about the facility, its services, and its costs. Likewise, the prospective resident must provide sufficient information about her medical history, and about any specific service needs or functional limitations.

Within two weeks after a resident's admission, the resident and/or resident's family member must meet with facility representatives, a representative of the home health agency (if such an agency is involved in the resident's care), and other appropriate individuals, to prepare a written care plan for the resident. The meeting may be coordinated and combined with the meeting described in the preceding paragraph. A similar meeting must occur at least once every twelve months to make any necessary changes to the care plan. See pages 34–35 for additional discussion of care plans.

What terms must be included in an admission agreement?

An admission agreement must detail basic and optional services, along with the

charges for each. The admission agreement also must include the conditions under which it can be modified.

The admission agreement must list any facility policies on resident behavior. In addition, the admission agreement must detail any circumstances that would justify the resident's eviction.

The Department of Social Services has put together a "Guide to Admission Agreements for Residential Care Facility for the Elderly." ("Residential Care Facility for the Elderly" is the legal term for what this guide calls an assisted living facility.) The state's guide explains the relevant law and includes a sample admission agreement. The guide is called Form LIC 604A by the Department of Social Services and can be downloaded from the Internet at www.dss.cahwnet.gov/ pdf/LIC604A.PDF.

ADVICE!

After an admission agreement is signed, the facility is required to give a copy to the resident or resident's representative.

Can an admission agreement specify rates that vary depending on the level of services that a resident may require?

Yes. An assisted living facility generally can price basic and optional services any way it chooses, unless the resident is eligible for Supplemental Security Income (SSI), or is receiving services through the Medi-Cal assisted living waiver pilot program. (More information about SSI and Medi-Cal can be found in the Paying for Care chapter at pages 18–23.) If a facility wishes to set varying rates, those rates must be specified in the admission agreement.

For example, an assisted living admission agreement could specify rates varying with a resident's needs. Generally, such admission agreements set a flat amount for a core package of services and assess extra charges for additional services.

A prospective resident should be wary of admission agreements that are vague in explaining when extra charges are assessed. For example, some admission agreements set out price levels that give the facility a great deal of discretion in deciding when the resident's care needs have moved her from one price level to another.

Keep in mind that no admission agreement can deny a resident necessary services. The applicable law merely gives facilities an option in the way in which they charge residents for the services.

Remember also that rates can vary with the level of services only if the rates were set out in the admission agreement. If an admission agreement does not provide for varying rates, a facility cannot assess extra charges for particular services that the resident requires.

Can a facility increase a resident's monthly rate after the resident's admission?

Yes. The law allows assisted living facilities to increase their rates, and explicitly exempts assisted living facilities from local rent control ordinances.

Notice of rate increases is required. An admission agreement must provide for at

least 60 days written notice of any increase in the facility's basic rate. Advance notice is not required when a resident's rate increase is due to increased care needs, and such an increase is authorized by the admission agreement.

If a resident is an SSI recipient, state regulations prohibit assisted living facilities from charging more than the basic SSI rate (currently $916 per month). Please see the Paying for Care chapter at pages 18–19 for additional information.

Can an admission agreement require a resident to pay a deposit?

Yes, in a way. State law allows a facility to collect a "preadmission fee." A facility must provide a written statement explaining any preadmission fee. A preadmission fee is not allowed if a resident receives SSI.

A facility must refund all of a preadmission fee if the prospective resident decides to live elsewhere before the facility completes its required appraisal of the resident's condition, or if the facility fails to give a written statement of the preadmission fee and refund conditions.

Otherwise, the facility is allowed to keep at least $500 of a preadmission fee, along with the following specified percentages of any amount over $500:

- 20% if a prospective resident decides to live elsewhere after the facility has completed the preadmission appraisal, or a resident moves out for any reason during the first month.
- 40% if a resident moves out for any reason during the second month.
- 60% if a resident moves out for any reason during the third month.

After the third month, the facility is allowed by state law to keep all of a preadmission fee.

Although a facility can require a preadmission fee, it cannot hold

BEWARE AN ADMISSION AGREEMENT THAT:

- Waives facility's responsibility for resident's safety or personal property
- Fails to explain types of care that facility can and cannot provide
- In an agreement with varying price levels, is vague about circumstances that justify higher price
- Requires security deposit or cleaning fee
- Requires advance notice of more than 30 days for resident's decision to move out
- Refuses to give refund when resident leaves before expiration of paid days

residents financially responsible for damage to the facility. In addition, state law prohibits assisted living facilities from requiring a security deposit for damages.

Also, the state does not allow assisted living facilities to charge for cleaning a unit after a resident leaves. Cleaning is a basic service which must be provided automatically by every facility.

Can an admission agreement limit a facility's responsibility for a resident's safety or personal property?

No. State law prohibits a facility from using an admission agreement to limit the facility's legal responsibilities.

Is a resident entitled to a rent refund if she is discharged before the end of her paid days?

Not necessarily. State law requires that an admission agreement list refund conditions, but these regulations do not designate particular refund conditions.

If a facility fails to mention refund conditions in the admission agreement, the resident should argue that the facility is obligated to pay a refund for all days for which the resident paid but did not use. In addition, a rent refund is required if a resident dies before her paid days have expired.

> **ADVICE!**
>
> If the admission agreement does not limit refunds, ask for a full refund for unused days.

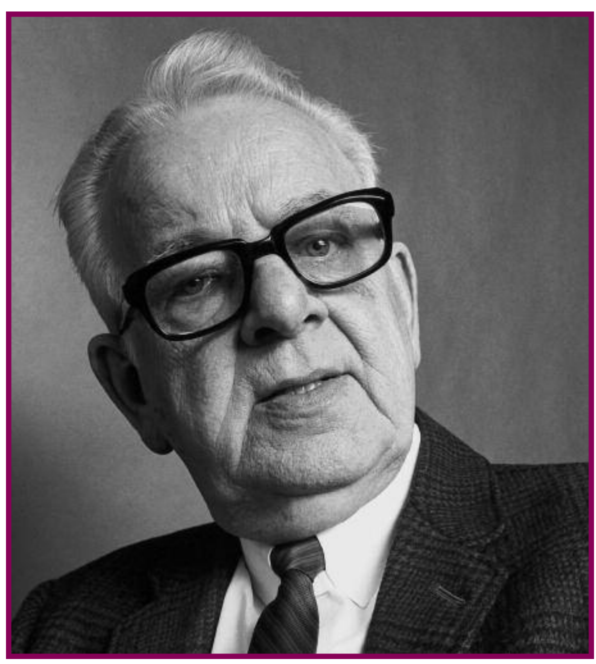
Can an admission agreement require that an entering resident give all of his savings to the facility?

Yes, but only under certain conditions.

A "continuing care contract" can require a person to pay a lump sum of money in exchange for a stay of over one year in an assisted living facility.

A "life care contract" (which is a type of continuing care contract) can require a person to pay all or most of his savings in exchange for residence in certain facilities for the remainder of his life. An assisted living facility can offer a life care contract only if the facility operates an adjacent nursing home. The life care contract must offer the person all necessary levels of care, including nursing home care.

Many life care contracts are offered by facilities associated with religious denominations or non-profit organizations.



Can all assisted living facilities offer life care contracts?

No. An assisted living facility can offer a continuing care contract or life care contract only with the approval of the Department of Social Services. A potential resident should ask to see state approval for any continuing care contract offered to her.

Can a resident escape from a continuing care contract if he changes his mind after signing it?

Yes, but only for a short period of time. A person automatically can escape a continuing care contract by cancelling it in writing within 90 days after he moves in. After the initial 90-day period, his cancellation rights are determined by the contract's language.

During the initial 90-day period, a facility does not need a reason to cancel a continuing care contract. After that time, however, the facility needs "good and sufficient cause" to cancel the contract.

In the event of a cancellation by either the resident or the facility, the resident generally must receive a refund of the difference between the amount of money paid to the facility and the total cost for the resident's care until the cancellation date.

ADVICE!

A resident can cancel a continuing care contract for any reason (or no reason at all) within 90 days after move-in.

Is a continuing care contract preferable to other admission agreements?

There is no universal answer to this question. Continuing care contracts are appropriate for some persons but wrong for others.

In general, a person signs a continuing care contract not because the continuing care agreement itself is desirable, but because she would do almost anything to

gain admission to facilities operated by certain religious denominations or non-profit organizations.

On the plus side, continuing care contracts may lessen a resident's financial concerns, since one large payment may cover virtually all of a resident's expenses. In addition, continuing care contracts may contribute towards a worthy cause.

On the other hand, a continuing care contract deprives a resident of all or most of her savings with no guarantee that the facility will remain financially solvent. Furthermore, a continuing care contract actually provides little extra security for the resident. If a resident were to pay monthly for facility care, she might never be evicted due to exhausted savings. The SSI and Medi-Cal programs pay for care in an assisted living facility or a nursing home, respectively, when a resident has virtually no savings. It should be noted, however, as explained in this guide's Paying for Care chapter on pages 18–21, that SSI payment for assisted living is available only for residents with very limited incomes.

Does a prospective resident have any control over an admission agreement's terms?

Yes, but only if he asserts himself.

If a proposed admission agreement contains troublesome language or fails to address certain important issues, the prospective resident or his family member can ask for changes. For example, if a prospective resident is worried that he may not be allowed to stay if he needs two-person assistance with transferring in and out of bed, he can ask that the agreement be modified to specify that a need for two-person assistance will not be grounds for eviction.

ADVICE!

It may seem awkward to request changes to a pre-printed agreement. On the other hand, awkwardness now is much better than being stuck in the future with an unfavorable admission agreement. Asking for changes can resolve the situation in advance, or demonstrate that a prospective resident might be better off in another facility because of the facility's unwillingness to accommodate the resident's wishes.

(This discussion on admission to an assisted living facility is based primarily on the California Health and Safety Code, sections 1569.147, 1569.154, 1569.651, 1569.655, 1569.80, 1569.880 through 1569.888, and 1770 through 1793.62; Title 22 of the California Code of Regulations, sections 87568 and 87583; Department of Social Services Memorandum, June 7, 1991; Department of Social Services Memorandum, April 1, 1992; Department of Social Services Memorandum, May 14, 2001; and a March 16, 1993 letter from William Jordan, Community Care Licensing Division, to Kathryn Ruff-Andonian, California Association of Health Facilities.

QUALITY OF CARE

Assisted living facilities are required by state law to provide residents with individualized services. Residents should speak up to ensure that the facility meets all of their care needs.

What determines the care that a particular resident should receive?

Assessments and care plans are the tools used by facilities to determine the services to be provided to a resident. Prior to a resident's admission, an assisted living facility must make a written assessment of the resident's needs. The assessment must include the resident's medical condition, mental capacity, personal preferences, and ability to carry out routine daily tasks. The facility may charge a fee to perform the assessment, but only if the facility discloses the fee and refund conditions in the admission agreement.

Prior to, or within two weeks of a resident's admission, a facility must then arrange a meeting with the resident, the resident's representative, appropriate facility staff, and a representative of the home health agency (if a home health agency is involved in the resident's care). During the meeting, the meeting participants prepare a written record of the care that the resident will receive in the facility, and the resident's preferences regarding the services to be provided, e.g., Mr. Doe prefers to eat breakfast in bed and bathe in the evening, and so will

receive tray service in the morning and three baths a week following dinner. A similar meeting must occur whenever there is a significant change in the resident's condition, or at least once every twelve months, to ensure that the written care plan is kept up-to-date.

Must a facility regularly monitor a resident's condition?

Yes. An assisted living facility must be aware of changes in a resident's physical, mental, or emotional condition. Significant changes in a resident's health must be reported to the resident's doctor and (if applicable) to a resident's close family member or friend.

ADVICE!

An individualized care plan can be an invaluable tool to improve the resident's care and quality of life. Don't let the facility turn care planning into a meaningless process. Discuss the resident's needs and preferences with the facility, and make sure that the written care plan includes necessary services.

Must resident assessments and plans be updated?

Yes. Assessments must be updated frequently enough to maintain their accuracy. At a minimum, the updates must include physical setbacks and emotional traumas (the death of a family member, for instance). In addition, the resident's written care plan must be reviewed and revised (if necessary) whenever there is a significant change in the resident's condition, or at least once every twelve months, in a meeting attended by the resident, the resident's representative, appropriate facility staff, and a representative of any home health agency involved in the resident's care.

How comprehensive must facility services be?

In general, an assisted living facility must enable its residents to have lives that are as active and satisfying as possible. Accordingly, a facility must assure that its residents receive all of the services that they need, including those services identified in the resident's care plan.

For example, a facility must provide services that "continue and promote, to the extent possible, independence and self-direction for all persons accepted for care."

WHAT SERVICES MUST BE PROVIDED?

- Care, supervision, and observation
- Living accommodations
- Three meals daily and snacks
- Assistance with activities of daily living (dressing, bathing, toileting, etc.)
- Social and recreational activities
- Assistance with obtaining, and transportation to and from, medical and dental care
- Other services described in this guide

What must a facility do to assure that a resident's simple daily needs are being met?

An assisted living facility must give a resident necessary assistance in activities of daily living (feeding, dressing, toileting, bathing, etc.). This assistance must be based on the resident's assessment and care plan.

What health-related services must a facility provide?

An assisted living facility must assure that each resident has access to needed medical or dental services. If necessary, the facility must provide transportation to the nearest office that will perform the needed services.

A facility also must assist a resident, if necessary, in the resident's self-administration of medications, and must store a resident's medication if it requires refrigeration and the resident has no private refrigerator. In addition, a facility must provide a resident with necessary help in the use of hearing aids, artificial limbs, and other medical devices.

Residents with certain health conditions may be admitted to or remain in an assisted living facility only if (1) the resident is capable of caring for the condition by herself, or (2) the resident receives necessary health care services from an appropriately skilled professional, e.g., a home health agency. These conditions include: need for oxygen administration or a breathing machine; a colostomy, ileostomy or catheter; diabetes; incontinence; and pressure ulcers (Stage 1 and 2, only). The facility must provide necessary supportive care and supervision for residents with these conditions.

A resident can receive in-facility health care from an outside health care provider, such as a home health agency.

What services must a facility provide for incontinent residents?

An assisted living facility must ensure that incontinent residents are kept clean and dry. The resident must be evaluated regularly to ensure that skin breakdown is not occurring. If appropriate, a bowel and bladder training program must be provided to an incontinent resident. A facility must take residents to the bathroom as necessary, and cannot use diapers or catheters for the facility's convenience.

What services must a facility provide to residents with dementia?

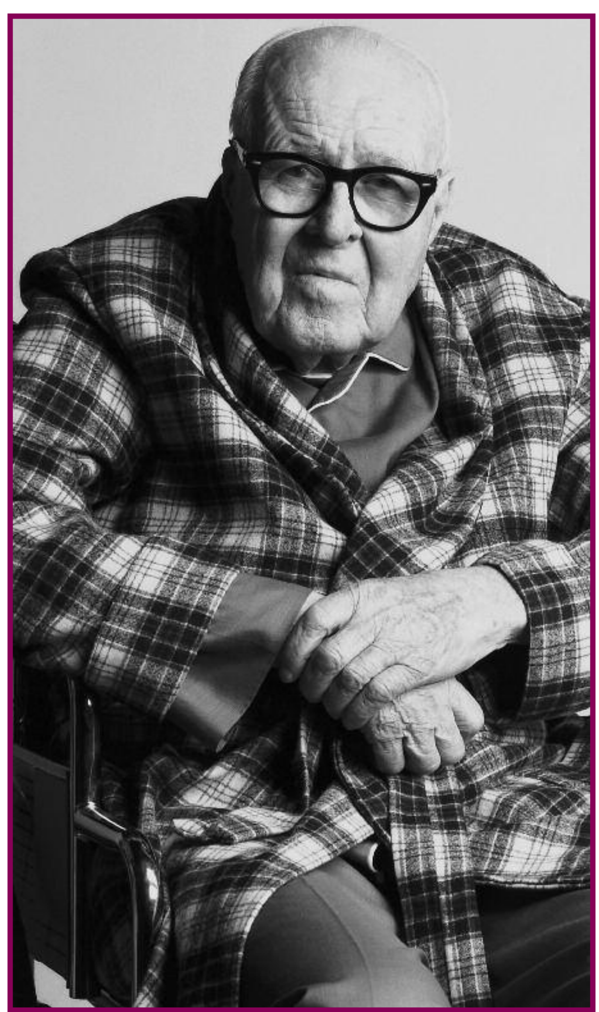
An assisted living facility can admit or retain a resident with dementia only if it complies with dementia-specific regulations regarding staffing, training, fire safety, and other safety measures. These regulations require an annual medical assessment, adequate supervision,

enhanced physical plant safety, and an appropriate activity program.

A facility may only use specialized devices to prevent residents from leaving the building if certain requirements are met. Delayed egress doors (doors that delay, but do not prevent a resident's exit from the building) and locked doors/perimeters require special fire clearances, and locking is only allowed with prior approval from the Department of Social Services. See additional discussion on page 41 in the Daily Living chapter.

A facility must provide an adequate number of staff to support the physical, social, emotional, safety and health care needs of each resident with dementia. The facility also must have an activity program that addresses the needs and limitations of residents with dementia.

If a facility advertises or promotes specialized dementia care, it also must describe its special dementia-related features in its plan of operation. The admission agreement must inform the resident or his legal representative that the special features are described in the plan of operation, and that the plan of operation is available for review on request. The facility also must ensure



that special training requirements are met by staff who provide care to residents with dementia.

May a terminally ill individual live in an assisted living facility?

Yes. An individual who is diagnosed as terminally ill by his doctor may live in an assisted living facility, but only if certain conditions are met. The facility must have approval from the Department of Social Services to care for terminally ill residents. The resident must contract for hospice services to be provided to him by a Medicare-certified hospice agency. The facility must be able to work with the hospice agency to provide necessary services to the resident. The hospice agency and facility must prepare a plan for the resident's care. Finally, any roommate of the resident must agree to allow hospice caregivers into the room.

This discussion on quality of care is based primarily on the California Health and Safety Code, sections 1569.651, 1569.725, 1569.73, and 1569.80; and Title 22 of the California Code of Regulations, sections 87569, 87575, 87578, 87582 through 87587, 87590, 87591, 87702 through 87722, and 87724 through 87225.1.

DAILY LIVING

When can a resident meet with visitors?

In general, a resident can meet visitors in an assisted living facility during reasonable hours of the day. The facility must assure that a resident and visitor are able to meet privately, if desired.

How many residents can a facility place in one bedroom?

No more than two residents are allowed to sleep in one bedroom. Single rooms often are available in an assisted living facility, but a resident must generally pay a higher monthly rate.

What type of bathroom facilities must be provided?

An assisted living facility must provide at least one toilet and sink for each six residents. A facility also must provide at least one bathtub or shower for each ten residents.

What indoor temperatures are acceptable?

Resident rooms must be heated to at least 68 degrees. The rooms must be cooled to a "comfortable range" between 78 and 85 degrees.

These rules do not prevent a resident from adjusting a thermostat in his room to his own preferences.

How must a facility serve meals?

An assisted living facility must offer residents at least three meals each day. Dinner during the evening and breakfast the following morning cannot be separated by more than fifteen hours. Tray service—delivering meals to the resident's room—must be provided as necessary.

Meals must meet nutritional guidelines, and consist of an appropriate variety of foods. They also must be planned with consideration for resident's cultural and religious backgrounds and food habits.

If necessary, a facility must offer meals that meet a resident's doctor-prescribed guidelines. In addition, a facility must chop or grind food for residents who have difficulty swallowing.

Is a facility required to provide between-meal snacks to a resident?

Yes, unless the snacks are prohibited or limited by dietary restrictions prescribed by the resident's doctor.

What activities must a facility provide?

An assisted living facility must provide activities to make residents' lives as complete as possible. Activities must promote socialization among residents and give residents contact with events outside of the facility. A facility also must provide special programs that address the needs and limitations of residents with dementia.

? WHAT ACTIVITIES MUST BE PROVIDED?

Facilities must make available to residents a variety of planned activities, including: group discussions, arts and crafts, music, games, exercise, educational classes, and access to community activities such as religious observances, concerts, and plays.

Is a facility required to provide residents with a telephone?

Yes. A state regulation requires that a resident must have access to a telephone to make and receive confidential calls, although a facility can require reimbursement for "long distance calls." A manual used by the Department of Social Services further explains that a facility may satisfy its requirements with a pay telephone, as long as the facility gives residents change to pay for local calls.

Can a facility prevent residents from leaving the facility?

Certain assisted living facilities have approval from the Department of Social Services to prevent residents from leaving. A resident can be admitted to such a "secured perimeters" facility only if the resident is placed in the facility by a conservator with appropriate legal authority, or if the resident consents to live in the facility.

Certain other assisted living facilities have "delayed egress" doors that delay, but do not prevent, a resident's exit from the building. These doors electronically notify a staff member when a resident is leaving the building. After being notified, the staff member may try to convince the resident to remain in the building, but the staff member may not prevent the resident from leaving.

Can a resident obtain copies of facility records relating to that resident?

Yes. A facility must provide copies of resident records to the resident, a resident's representative, or to any person or organization designated by the resident or the resident's representative.

How can residents work for improvements in the facility?

Residents may form a resident council, a group that speaks to the facility's administration on behalf of residents. The resident council may include residents and residents' family members.

If residents of an assisted living facility wish to have a resident council, the facility must assist the residents in forming and maintaining the council. The facility must provide a meeting room and post meeting notices. The facility also must assist residents with disabilities as necessary to enable them to attend meetings.

The facility must allow at least part of each resident council meeting to be conducted without the presence of a facility employee.

> **ADVICE!**
>
> Organizing resident or family councils is not easy, but it is worthwhile. Working together, residents and their families can bring about changes that are difficult to achieve on an individual basis. Think creatively about how a council can be used to improve life in the facility. Take pride in small victories, and use them to build towards bigger improvements.

How can residents' family members work for improvements in an assisted living facility?

As mentioned above, residents' family members can participate in a resident council. In addition, the law encourages the organization of family councils. Family councils are meetings of family members (or friends) outside the presence of facility employees. Upon request, the facility must provide the family council with a meeting room and a prominent place on which to post meeting notices.

This discussion on daily living is based primarily on the California Health and Safety Code, sections 1569.157, 1569.158, 1569.698, and 1569.699; and Title 22 of the California Code of Regulations, sections 87570, 87572, 87576, 87577, 87579, 87592, and 87691; and DSS Regulation Interpretations for Title 22 of the California Code of Regulations, sections 85072 and 87572.

PROTECTING RESIDENT'S PROPERTY

Residents of assisted living facilities may not have the physical or mental strength to protect their own property. As a result, the possession and management of residents' property can create a range of potential problems. Applicable law determines whether a facility can demand control of a resident's property, what a facility must do with resident property specifically given to it for safekeeping, and what a facility must do to protect resident property not specifically entrusted to the facility.

Can an assisted living facility act as a court-appointed conservator for a resident?

State regulations prohibit an owner or employee of an assisted living facility from acting as a conservator for a resident, unless the conservatorship has been set forth in a continuing care contract approved by the Department of Social Services. (Conservatorships are discussed on pages 65–67 of this guide; continuing care contracts are discussed on pages 29–31.)

Can an assisted living facility act as a resident's representative payee of Social Security payments or SSI payments?

Yes. The Department of Social Services allows a person holding an assisted living license to receive checks from the Social Security Administration on a resident's behalf. The person appointed to receive Social Security checks on behalf of another person is called the "representative payee." The Social Security Administration is supposed to monitor representative payees to prevent abuses. Unfortunately, this monitoring generally is not done well.

Can a resident be required to deposit his personal funds with the facility?

No. An assisted living facility has no authority to require such a deposit.

Can a resident require the facility to hold and safeguard the resident's personal funds or property?

Yes, if the facility accepted or retained the resident while knowing that the resident could not handle his own funds or property.

What must a facility do with a resident's funds or property which the facility has agreed to hold?

If an assisted living facility agrees to hold and protect a resident's personal funds or property, the facility must give the resident receipts for all transactions involving the funds or property. The facility also must keep accurate records (including the receipts and a ledger) of all resident funds or property that have been entrusted to it.

The facility must keep a resident's personal funds separate from the facility's funds. The resident's funds may be kept in a bank account or a "locked and secure location" at the facility.

When a resident moves out, the facility must give the resident all the personal funds and property which she previously had entrusted to the facility. Similarly, if a resident dies while in a facility, the facility must release the resident's personal funds and property to the executor of the resident's estate.

Must a facility take any steps to safeguard a resident's property not specifically entrusted to the facility?

Yes. All assisted living facilities are required to maintain a program to reduce the theft and loss of residents' property. As part of this program, a facility must inventory a resident's personal property when the resident enters the facility. If feasible, a facility must mark the personal property for identification purposes.

ADVICE!

- A resident should not keep valuable or irreplaceable items at the facility, or should keep such items locked in a safe or drawer.
- A resident should make sure that the facility prepares a written inventory of all of her property and updates the inventory as appropriate.
- A resident should make sure that the facility marks or tags all of her belongings.

At the request of the resident or family member, the inventory must be amended to reflect personal items brought into or removed from the facility. Also upon request, the facility must provide a copy of the inventory to the resident or family member.

A facility must keep records of stolen or lost property if the property is worth at least $25. The records must include the property's description and value, the date and time the theft or loss was discovered and occurred (if known), and any action taken by the facility. If the stolen property is worth at least $100, the facility also must make a report to the local law enforcement agency.

Upon request, a facility must provide a lock for a resident's drawer or cabinet. The facility may require the resident to pay for the lock.

ADVICE!

A facility is responsible for stolen or lost property if the facility did not take adequate steps to protect the property.

What can a resident do to help safeguard his personal property?

A resident of an assisted living facility should make sure that the facility properly (as described above) inventories and marks the resident's personal property. In particular, the resident should ensure that his glasses, hearing aids, and dentures are marked. If the resident can afford the expense, he should rent a safe or buy a lock for a drawer or cabinet.

If at all possible, a resident should not keep irreplaceable or valuable items at the facility.

Is a facility financially responsible for a resident's stolen or lost personal property?

Yes, in some cases. An assisted living facility is responsible for a resident's stolen or lost property if the facility failed to make reasonable efforts to safeguard the resident's property. Compliance by the facility with legal requirements (as detailed in this chapter) is considered initial proof that the facility made reasonable efforts. Nonetheless, even if the facility complied with legal requirements, the resident or family member may be able to show that the facility failed to make reasonable efforts.

What should a resident do if her property is lost or stolen?

A resident should report any theft or loss to the administrator or staff immediately. If the facility is unable to locate the property, the resident should check to see whether the item is included in her inventory, and whether she has receipts or other documents that show its value. If the item is included in the resident's inventory and she has a receipt for it, it should be easier for her to obtain reimbursement from the facility.

The resident should then prepare a written letter to the facility requesting reimbursement, and describing the property that was stolen or lost, the value of the property (attach receipts or other documents demonstrating its value, if available), the date on which the resident initially informed the facility that the property was stolen or lost, and the circumstances surrounding the theft or loss. If possible, the letter also should specify the nature of the facility's failure to take reasonable steps to protect the property, e.g., the facility failed to prepare an inventory or mark the resident's property.

If the facility does not take timely action or refuses to pay, the resident should consider involving the ombudsman, filing an action in small claims court, and/or filing a complaint with the Department of Social Services. See the Resolving Problems chapter at pages 70–73 for additional information.

Can a facility ask a resident to release it from its obligation to safeguard the resident's property?

No. State law prohibits an assisted living admission agreement from reducing the facility's responsibility for residents' personal property.

This discussion on protecting residents' property is based primarily on the California Health and Safety Code, sections 1569.152 through 1569.154; the California Civil Code, section 1668; Title 22 of the California Code of Regulations, sections 80026 and 87227; Department of Social Services Memorandum, April 1, 1992; and Community Care Licensing Division Policy Memorandum, December 28, 1992.

PREVENTING EVICTION

Can a facility force a resident to move?

Yes, but only under very limited circumstances. An assisted living resident generally has the right to remain living at the facility, even if the facility would prefer that the resident move out.

A facility can evict a resident only for one of the following five reasons:

(1) The resident failed to pay for basic services within ten days of the due date.

(2) The resident failed to comply with state or local law after receiving written notice of the alleged violation.

(3) The resident failed to comply with general facility policies set forth in the admission agreement. These facility policies explicitly "must be for the purpose of making it possible for residents to live together."

(4) A formal reappraisal has found that the resident's needs have changed, and the assisted living facility cannot meet those changed needs.

(5) The facility will no longer be licensed to care for persons like the resident.

Can a facility evict a resident for nonpayment when, due to declining resources, the resident becomes eligible for SSI and reduces her monthly payment to the SSI monthly rate?

No. As discussed in the Paying for Care chapter at pages 18–19, an assisted living facility may only charge an SSI recipient $916 monthly to stay in a semi-private room.

Assisted living regulations state: "if the resident is an SSI recipient, then the basic services shall be provided and/or made available at the basic rate at no additional charge to the resident." Consequently, a facility can never charge an SSI recipient more than the SSI monthly rate of $916, even if the resident agreed during admission to pay a higher monthly rate.

ADVICE!

A facility can force a resident to leave only if the facility can prove one of five limited justifications.

Can a facility evict a resident rather than providing care that he needs?

Probably not, unless the resident's care needs are so great that state law does not allow him to remain in an assisted living facility.

A facility may attempt to evict a resident when the necessary care would be difficult or costly. To justify the attempted eviction, the facility generally claims that it cannot meet the resident's needs. State law does allow eviction if the resident's condition has changed and the facility can no longer meet the resident's needs. However, this state law may be overridden in some situations by the federal Americans with Disabilities Act, which prohibits a facility (along with other service providers) from discriminating based on medical condition.

The federal law can be used effectively to argue that a facility should provide extra care rather than claiming that it cannot meet the resident's needs. Under this argument, a facility may not refuse to provide difficult or expensive care, as long as the requested care can legally be provided in an assisted living facility.

If a resident believes that a facility can care for him, but simply does not want to, the resident should challenge the eviction by arguing that the facility is discriminating against him in violation of the federal anti-discrimination law.

ADVICE!

Assisted living lobbying groups regularly cite federal anti-discrimination law to push for the right to care for residents with significant medical conditions, but they generally fight against any state law that obligates them to provide care for these same residents. Residents should cite the federal anti-discrimination law to show facilities that the right to care for frailer persons brings with it obligations. If facilities have the right to care for residents who need injections (for example), they should not be allowed to evict a resident just because he requires injections.

What type of notice is required for eviction?

An assisted living facility must give a resident a 30-day written notice of its intention to force the resident to leave. The notice must list at least one of the five legal reasons justifying eviction (discussed on page 50), along with specific facts to allow the resident to determine the date, place, and witnesses of the incident(s) that supposedly justify eviction.

In rare instances, a facility may give a resident a three-day written notice

of eviction. The three-day notice may only be given if (1) the resident's continued stay in the facility endangers the health or safety of the resident or other residents, and (2) the Department of Social Services in advance has given written approval for the three-day notice.

Can a resident contest a facility's decision to evict him?

Yes. Residents of assisted living facilities have the same appeal rights as other residential tenants. California landlord/tenant law applies to "all persons who hire ***dwelling units*** located within [California] including tenants, lessees, boarders, lodgers, and others, ***however denominated.***" (Emphasis added.) The California Supreme Court has ruled that a residence is a dwelling unit even if the tenant receives services from the building operator.

If an assisted living resident is told by the facility that he must leave, the resident should consider the five legitimate reasons for eviction. If the resident believes that none of the five reasons apply, he can simply refuse to move. The facility then will be forced to either abandon the eviction or prove one of the five reasons in court.

If a facility chooses to go to court, the resident will receive a summons and an "unlawful detainer" complaint. Once the resident receives the summons and complaint, he must file an answer with the court within five days. At the same time, the resident should send a copy of the answer to the facility.

Once the court has on file both the complaint and answer, the court will notify both the resident and the facility of a date and time for trial. At the trial, a judge will decide whether the resident can be evicted.

If a resident is served with a summons and unlawful detainer complaint, he should talk immediately to a knowledgeable attorney.

ADVICE!

Many attempted evictions are wrong. If a resident refuses to leave, the facility often will abandon the eviction. Also, residents often win when they challenge evictions in court.

Can an assisted living facility refuse to readmit a resident after a hospital stay?

No, unless the resident has been evicted under the court process described above. Like apartment buildings and other types of rental dwellings, assisted living facilities are prohibited from simply locking out residents. If a facility believes that a resident returning from a hospital stay is subject to eviction for any of the five reasons set forth at the beginning of this chapter, the facility must readmit the resident prior to beginning any eviction procedures.

Can a government agency force a resident to move?

Probably not. Under state regulations, the Department of Social Services may order an assisted living facility to relocate a resident. The regulations, however, do not give the state direct authority over the resident. As a result, the state does not have the ability to force a resident to leave a facility.

When can the Department of Social Services order the relocation of a resident?

The state may order that an assisted living facility relocate a resident if the state believes that the facility is not licensed to handle the resident's particular health conditions.

If the state believes that the resident's health conditions currently endanger the resident's safety, it can order immediate relocation. If the state believes that the resident's health conditions are not an immediate danger, the state must give written notice of the proposed relocation and the right to appeal the relocation to the facility, the resident, and the resident's representative.

Can a resident challenge a relocation decision made by the Department of Social Services?

Yes. If the state did not order immediate relocation, the resident or the resident's representative may submit a written appeal of the relocation order. The written appeal must be submitted to the assisted living facility within three working days after the resident or the resident's representative received the order. The facility then must forward the appeal to the state. Upon receipt of the appeal, a review group working within the state reviews (and possibly reverses) the decision.

Additionally, the resident simply may decline to obey the relocation order, even one requiring immediate relocation. As discussed above, the state could penalize the resident's facility but has no direct authority over the resident.

A resident should challenge a relocation order only if she believes that the order is a mistake. The resident does not benefit if she remains in a facility that cannot care for her health problems.

Telephone numbers for the Department of Social Services are listed on pages 76–77 of this guide.

This discussion on preventing eviction is based primarily on the Americans with Disabilities Act, Titles II and III, 42 United States Code, sections 12131-12165 and 12181-12189; the Fair Housing Amendments Act of 1988, 42 United States Code, section 3604; Section 504 of the Rehabilitation Act, 29 United States Code, section 794(a); California Civil Code, section 1940; the California Health and Safety Code, sections 1569.34 and 1569.54; Title 22 of the California Code of Regulations, sections 87589, 87590(e), 87701.1, and 87701.5; and Klarfeld v. Berg, 29 Cal. 3d 893, 176 Cal. Rptr. 539 (1981).

HEALTH CARE DECISIONS

An assisted living resident has the right to make her own health care decisions as long as she has the capacity to do so. If, however, a resident becomes mentally incapacitated (due to a stroke, coma, dementia, or other disease or accident), the resident legally can receive health care only if a legal representative for the resident authorizes the health care, or if the resident previously had issued health care instructions in the format required by law.

May a resident authorize or refuse medical treatment?

Yes. An assisted living resident has the same rights as other adults to receive or reject medical care. Medical professionals cannot provide treatment until they first obtain the resident's informed consent. Similarly, facility staff members cannot administer medication without the resident's consent. Under certain circumstances, a resident's legal representative may make medical treatment decisions for the resident if the resident lacks the ability to consent.

What written documents can be used to specify preferences regarding future health care?

California law authorizes three types of documents:

(1) In a ***Power of Attorney for Health Care***, a person appoints another person to make health care decisions for him if he should become incapacitated in the future. He also can list instructions about his future health care.

(2) In an ***Individual Health Care Instruction***, a person can list instructions about his future health care, including, but not limited to, life-and-death decisions.

(3) In a ***"Do Not Resuscitate"*** form, a person can specify that he does not wish to receive emergency resuscitative measures such as cardiopulmonary resuscitation (CPR).

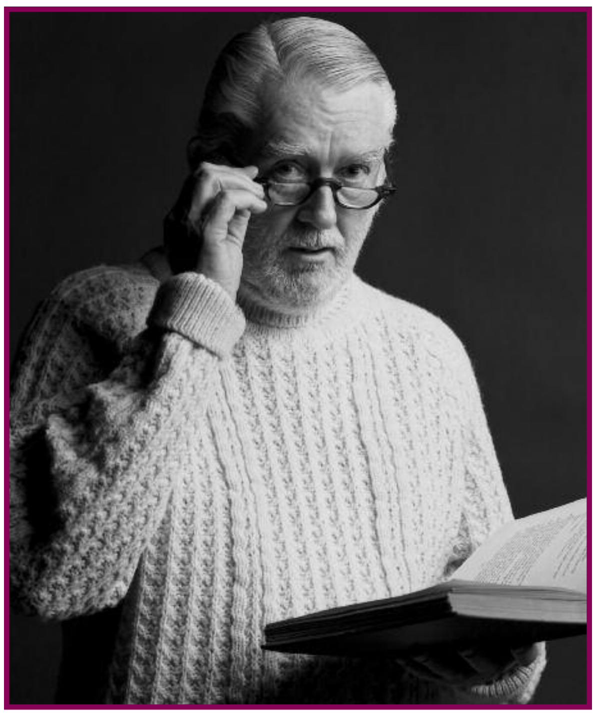
These three documents are discussed further in the remainder of this chapter. Note that the terms "Advance Health Care Directive," "Advance Directive," and "Living Will" are often used to refer to one or more of these documents interchangeably, but none of these names are defined in California law.

Why should a resident appoint another person to make health care decisions for her?

Most facility residents have the capacity to make health care decisions for themselves. Any resident, however, may become mentally incapacitated in the future. Consequently, a resident should prepare now to assure that she receives appropriate health care if she ever becomes mentally incapacitated.

If a resident has no legal representative when the resident becomes mentally incapacitated, the resident may not be able to receive needed medical treatment. Similarly, a mentally incapacitated resident without a legal representative may not be able to refuse medical treatment which will only prolong her pain, even if the resident has no real prospect of recovery.

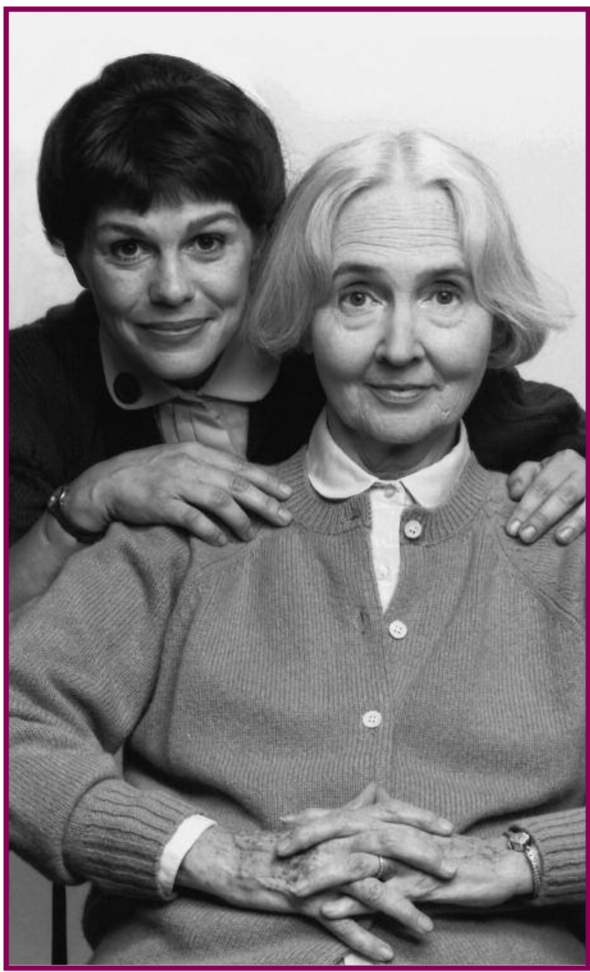
On the other hand, if a person has been appointed to make health care decisions for a mentally incapacitated resident, those decisions can be made in a way most consistent with the resident's expressed desires.



The previous discussion applies to everyone, not just to assisted living residents. Persons of all ages and health conditions can benefit by appointing a family member or friend now to make health care decisions if and when the appointing person becomes mentally incapacitated.

ADVICE!

Everyone, whether or not living in a facility, should select a health care agent and complete a Power of Attorney for Health Care.



How can a resident appoint another person to make health care decisions for the resident?

In California, an adult of sound mind can create a Power of Attorney for Health Care. The Power of Attorney for Health Care is a legally binding document that allows the person appointed (the "agent") to make health care decisions for the resident if the resident becomes mentally unable to make such decisions. The Power of Attorney for Health Care thus allows a doctor, hospital, or other health care provider to receive clear instructions even if the resident no longer can make health care decisions.

Whom should a resident select as his agent under a Power of Attorney for Health Care?

A resident should select an agent who knows the resident well, can follow the resident's wishes, and can discuss life and death issues with the resident. The agent can be a family member, friend, or other person. The agent cannot be a health care provider to the resident, or an owner or employee of an assisted living facility.

The resident should always select one or two alternate agents, in case the primary agent is unable or unwilling to act.

Can a resident give specific instructions to an agent appointed through a Power of Attorney for Health Care?

Yes. Common forms for a Power of Attorney for Health Care provide an optional section in which a resident can declare her desire to receive or not receive life-sustaining treatment (such as

ventilator care, or artificial nutrition or hydration) under certain conditions. These optional sections also often provide space for a resident to list any instructions relating to health care decisions that she wishes to express.

In addition to written instructions, a resident should discuss her health care wishes with the agent. Discussing health care decisions now, while the resident is able to explain her desires, can give the agent a greater sense of comfort about difficult decisions that may have to be made in the future.

Your Way, a helpful guide to discussing and choosing future health care, is available from the Healthcare and Elder Law Programs Corporation (H.E.L.P.) of Torrance, California, (310) 533-1996, www.help4srs.org. Another helpful resource is the *Consumer's Tool Kit for Health Care Advance Planning* from the American Bar Association's Commission on Law and Aging, www.abanet.org/aging/toolkit.

ADVICE!

A resident should discuss her personal desires with her health care agent. It is difficult to talk about life-and-death issues, but such discussions will help the resident's agent and medical providers carry out the resident's wishes.

What kinds of health care decisions can an agent make for a mentally incapacitated resident?

A Power of Attorney for Health Care allows an agent to make any and all health care and treatment decisions for a mentally incapacitated resident, subject to the resident's instructions listed in the Power of Attorney for Health Care. The agent can consent to diagnostic procedures and surgery, and even decide whether to withhold or withdraw life-sustaining procedures.

Can a resident make instructions about future health care without appointing an agent?

Yes. An Individual Health Care Instruction enables a resident to state his desires about future health care. An Individual Health Care Instruction must be honored by health care providers when the resident no longer is capable of making his own health care decisions.

Under California law, an Individual Health Care Instruction can be written or oral, although this guide recommends that an Individual Health Care Instruction always be done in writing.

WHERE CAN I GET HEALTH CARE DECISION-MAKING FORMS?

- Bet Tzedek Legal Services, (323) 939-0506, (818) 769-0136, or www.bettzedek.org
- H.E.L.P., (310) 533-1996, www.help4srs.org
- California Medical Association, (800) 882-1262
- Hospitals and other health care providers

Which is better, a Power of Attorney for Health Care or an Individual Health Care Instruction?

In general, a resident should use a Power of Attorney for Health Care, because the agent appointed by the Power of Attorney for Health Care can act on the resident's behalf based on the particular circumstances. By contrast, with an Individual Health Care Instruction, it is practically impossible for a resident to issue meaningful instructions now about all health care decisions that may arise in the future.

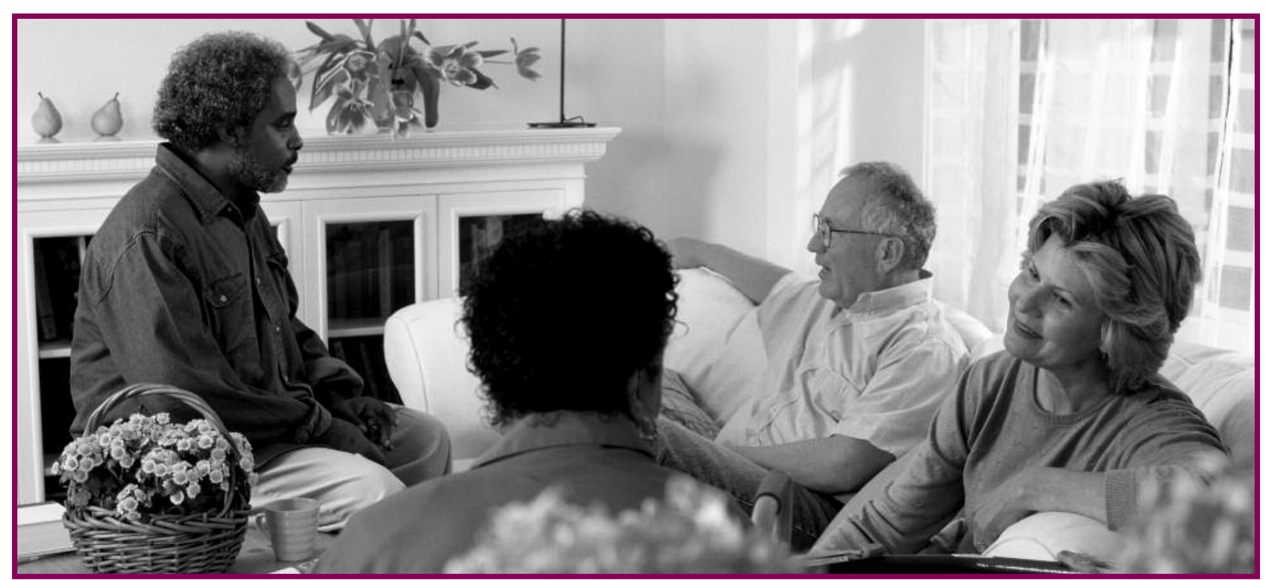
An Individual Health Care Instruction is most useful for those residents who have no family member or friend who is able or willing to act as an agent. In that case, an Individual Health Care Instruction may be a resident's only option.

Does a resident need to hire an attorney to create either a Power of Attorney for Health Care or an Individual Health Care Instruction?

No, not necessarily. Although attorneys prepare both Powers of Attorney for Health Care and Individual Health Care Instructions, either document also can be completed with a relatively inexpensive fill in-the-blanks form. If a resident's desires are relatively straightforward, a form document generally is adequate. A resident can usually complete a form simply by following the directions on the form.

Free copies of a Power of Attorney for Health Care and Health Care Instruction Form can be obtained by telephone or downloaded online from Bet Tzedek Legal Services at (323) 939-0506, (818) 769-0136, or www.bettzedek.org, or the Healthcare and Elder Law Programs Corporation (H.E.L.P.) at (310) 533-1996 or www.help4srs.org. Forms also may be obtained from a hospital or other health care provider, or purchased from the California Medical Association at (800) 882-1262.

California residents should be sure to use forms that comply with California law as each state has its own laws governing advance directives.



Are witnesses required for the signing of a Power of Attorney for Health Care or an Individual Health Care Instruction?

Yes, either document must be witnessed by two qualified adults or notarized. A witness cannot be the appointed agent, a provider of health care to the resident, or an owner or employee of an assisted living facility. At least one of the two witnesses must be someone who is not related to the resident and has no claim to the resident's estate.

ADVICE!

Make multiple copies of your health care documents and distribute them to your health care agent, family, friends, doctors, hospitals, HMOs, and other health care personnel and facilities.

How should a resident notify others that he has created a Power of Attorney for Health Care or an Individual Health Care Instruction?

A resident should give copies of the document to his health care agent, family members, the assisted living facility, and the resident's doctors and hospital. Under California law, a copy is just as authoritative as the original.

CALIFORNIA POWER OF ATTORNEY FOR HEALTH CARE
AND HEALTH CARE INSTRUCTION FORM

NOTE: COMPLETION OF THIS FORM IS ONLY THE FIRST STEP.
YOU SHOULD DISCUSS YOUR WISHES IN DETAIL WITH YOUR DESIGNATED AGENT(S).

- WITH THIS FORM YOU MAY DO ANY OR ALL OF THE FOLLOWING:
  1. NAME AN AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOU CANNOT.
  2. INSTRUCT DOCTORS AND OTHER HEALTH CARE PROFESSIONALS HOW YOU WOULD LIKE TO BE TREATED IF YOU ARE HURT OR SERIOUSLY ILL AND UNABLE TO TELL THEM YOUR WISHES.
- READ THE FORM CAREFULLY. CROSS OUT ANY PROVISION YOU DO NOT WANT.
- THIS FORM REVOKES ANY PRIOR DIRECTIVES YOU HAVE MADE.
- AFTER YOU COMPLETE THIS FORM SIGN AND DATE IT. TWO WITNESSES OR A NOTARY MUST ALSO SIGN AND DATE IT.

My name is: ____________________.

In this document I appoint an agent. That agent will make health care decisions for me in the future, if and when I no longer have the mental capacity to make my own health care decisions. My primary care physician will determine when I am unable to make health care decisions for myself.

Part 1 - NAMING YOUR AGENT (If you do not have an agent, please proceed to Part 2 on page 3.)

*The following persons **cannot** be selected as your agent or alternate agent:*
- *Your primary physician.*
- *An employee of the health care institution or residential care facility where you receive care (unless you are related to that person).*

AGENT

Name: ____________________

Address: ____________________ City State Zip

Home Phone: (   ) __________ Work Phone: (   ) __________

1ST ALTERNATE AGENT (If Agent is unavailable or unwilling to serve.)

Name: ____________________

Address: ____________________ City State Zip

Home Phone: (   ) __________ Work Phone: (   ) __________

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If a resident has appointed an agent through a Power of Attorney for Health Care, the resident should prepare a card that lists the telephone number of the resident's agent, and then keep that card in his wallet.

If desired, a resident also can register the document with the California Secretary of State, (916) 653-3984, by filling out the Registration of Written Advance Health Care Directive Form (www.ss.ca.gov/business/sf/forms/sfl-461.pdf) and mailing it to the Secretary of State with the applicable filing fee. The fee for the registration of a new advance directive is $10.00. However, registering with the Secretary of State does not guarantee that a person's health care wishes will be carried out, because California law currently does not require hospitals, doctors, paramedics or facilities to check the registry.

Who determines when a resident can no longer make her own health care decisions?

Unless specified otherwise in a Power of Attorney for Health Care or an Individual Health Care Instruction, a resident's primary doctor determines the resident's ability to make health care decisions.

Is there an expiration date for a Power of Attorney for Health Care or an Individual Health Care Instruction?

No. Once completed, either document remains effective indefinitely. Nonetheless, as discussed immediately below, a resident of sound mind may revoke either document at any time.

Can a resident revoke a Power of Attorney for Health Care or an Individual Health Care Instruction?

Yes. A resident can revoke a Power of Attorney for Health Care or an Individual Health Care Instruction at any time. However, the requirements differ depending on the nature of the changes made by the resident.

If a resident wishes to revoke the designation of an agent, the resident can do so only by personally informing his doctor or by a signed writing. However, if a resident wishes to revoke health care instructions, he can do so "at any time and in any manner that communicates an intent to revoke." If there are conflicting instructions in advance directives, the most recent directive will revoke the earlier one only with respect to the conflicting information.

This guide recommends that all revocations be done in writing. The resident should notify both the old and new health care agents (if applicable), complete a new Power of Attorney for Health Care or Individual Health Care Instruction, and provide copies of the new directive to his health care agent, family members, the assisted living facility, and the resident's doctors and hospital.

Can a resident specify that she be allowed to die under certain circumstances?

Yes. As discussed earlier in this chapter, a resident can create a Power of Attorney for Health Care to (1) designate an agent to make health care decisions for the resident if the resident loses the ability to make such decisions, and (2) specify the conditions under which the resident would not wish to receive life-sustaining treatment. Also as discussed in this chapter, a resident can create an Individual Health Care Instruction to specify the conditions under which the resident would not wish to receive life-sustaining treatment.

Additionally, a resident can sign a written document that authorizes a health care provider to withhold "resuscitative measures" such as CPR. This document (commonly referred to as a "Do Not Resuscitate" or "DNR" form) also must be signed by a physician. Neither witnesses nor notarization are required.

To a great extent, the Do Not Resuscitate form is duplicative, since a Power of Attorney for Health Care and an Individual Health Care Instruction also can be used to withhold resuscitative measures. As discussed on pages 64–65,

however, the Do Not Resuscitate form is useful because it is the only form that routinely is honored by paramedics.

The vast majority of pre-printed "Do Not Resuscitate" forms are entitled "Pre-Hospital Do Not Resuscitate," and are written so that they do not apply when the individual is in a hospital. As a result, many hospitals are not accustomed to working with "Do Not Resuscitate" forms. Upon admission to a hospital, a resident who does not want resuscitative measures should discuss this issue with the attending physician as soon as possible, so that the physician can issue the appropriate order.

ADVICE!

If you do not want CPR from a paramedic, fill out a Do Not Resuscitate (DNR) form and obtain a DNR bracelet or medallion.

Must an assisted living facility call paramedic services for a dying resident, although the resident has requested through a legal document that he be allowed to die?

Yes, generally. There is only one exception to this rule: an assisted living facility can honor a resident's request to be allowed to die if the facility employs a licensed health care provider who is at the facility during the time of the life-threatening emergency.

Will a paramedic attempt to resuscitate a dying resident, even if the resident has requested through a legal document that she be allowed to die?

Yes, unless the paramedic is shown that the resident has signed a "Do Not Resuscitate" form, or unless the resident is wearing a "Do Not Resuscitate" bracelet or medallion approved by a paramedic agency. The California paramedic agency has stated that California paramedics will not honor any other documentation of a request to withhold medical treatment.

Legally, the position of the California paramedic agency is wrong; like all health care providers, paramedics are obligated to honor the legal documents described earlier in this chapter. However, paramedics do not have the time to evaluate various advance directive forms. To avoid problems, a resident should comply with the paramedics' procedures if the resident does not wish to be resuscitated by a paramedic. "Do Not Resuscitate" forms can be obtained from a doctor's office, hospital, nursing facility, or the California Medical Association, (800) 882-1262. "Do Not Resuscitate" bracelets and medallions can be obtained from the Medic Alert

Foundation, (800) 432-5378. These forms, bracelets and medallions are honored by paramedics throughout California.

Can a family member or friend make health care decisions for a mentally incapacitated resident if the resident never appointed an agent?

According to California case law, the nearest relative of a mentally incapacitated person can make health care decisions for that person if no one else has been appointed to make those decisions. This law, however, does not provide a relative with any formal documentation of his authority over the mentally incapacitated person's health care decisions. As a result, a health care provider often is hesitant to accept the health care decision of the nearest relative, unless the proper decision is obvious, or unless the entire family agrees with the decision of the nearest relative.

When a difficult health care decision must be made for an incapacitated resident, or when the family members and friends disagree on the proper medical treatment, a family member or friend should seek formal, documented authority to make health care decisions on behalf of the resident. The family member or friend can petition the court to be: (1) appointed as conservator over the resident, or (2) given authority to make a particular health care decision for the resident.

In a conservatorship, a court appoints someone to act indefinitely on behalf of an incapacitated adult. The person appointed (the "conservator") can be given the power to determine the medical treatment, finances and/or residence of the incapacitated adult (the "conservatee"). The court determines the scope of the conservator's powers. A conservator is not authorized to make health care decisions on behalf of a conservatee unless (1) the court determines that the conservatee lacks the capacity to give an informed

consent for medical treatment, and (2) the court orders that the conservator be given the power to make health care decisions for the conservatee.

ADVICE!

Not all conservators are entitled to make health care decisions on behalf of a conservatee.

If an incapacitated resident does not need an ongoing conservator, a family member, friend, or other interested person can petition a court for authority over a particular health care decision of the resident. Unlike a conservatorship, this procedure cannot grant authority over the resident's finances or residence, and expires at the conclusion of the particular health care treatment.

A family member or friend desiring a conservatorship or a particularized authorization should consult an attorney.

Which is better, a Power of Attorney for Health Care or a Conservatorship?

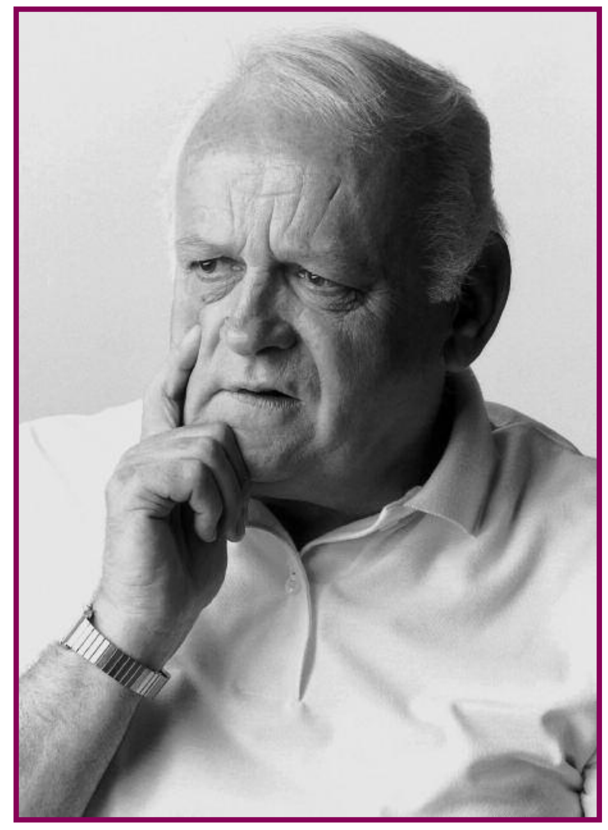
A Power of Attorney for Health Care enables a resident to control her future health care. A resident can decide who will make decisions for her, and tell the agent what types of decisions to make, such as whether to authorize life-sustaining treatment.

If a resident has never completed a Power of Attorney for Health Care and becomes incapacitated, a conservatorship may be necessary. Unlike a Power of Attorney for Health Care, a conservatorship involves a legal proceeding, is costly, and likely will take more than two months to complete. In a conservatorship, the judge appoints the heath care decision-maker ("conservator") and decides what types of decisions the conservator can make. The conservator may not have any knowledge regarding the resident's health care preferences.

ADVICE!

If you want your health care wishes carried out, it is best to put them in writing.

Who makes health care decisions for an incapacitated resident who did not previously appoint an agent, and who has no family members or friends willing to act as a legal representative?



A county's Public Guardian Office can act as conservator for an incapacitated resident, although most Public Guardian Offices accept relatively few conservatorship cases. A private professional conservator also can be appointed to act on behalf of a resident. The Public Guardian and private professional conservators charge fees for their services, and those fees are taken from the resident's savings. In addition, any interested person (including a resident's health care provider) can apply to the court for a particularized authorization for health care decisions.

This discussion on health care decisions is based primarily on the California Government Code, sections 27430 through 27436; the California Probate Code, sections 1800 through 1898, 2100 through 2944, 3200 through 3211, and 4600 through 4805; the California Health and Safety Code, sections 1569.74 and 7185 through 7194.5; Title 22 of the California Code of Regulations, sections 80072 (a)(9) , 87572(a)(16), 87575(a)(6)(D); Conservatorship of Wendland, 26 Cal. 4th 519, 110 Cal. Rptr. 2d 412 (2001); Conservatorship of Drabick, 200 Cal. App. 3d 185, 245 Cal. Rptr. 840 (1988); Barber v. Superior Court, 147 Cal. App. 3d 1006, 195 Cal. Rptr. 484(1983); Cobbs v. Grant, 8 Cal. 3d 229, 104 Cal. Rptr. 505 (1972); a July 30, 1993 letter from Joseph Morales of the California Emergency Medical Services Authority; and an October 12, 1993 memorandum from Darlene Isbell of the Emergency Medical Services Agency of the County of Los Angeles.

RESOLVING PROBLEMS

Previous chapters of this guide have described the proper, legal operation of an assisted living facility. Unfortunately, however, some facilities fail to provide the required care.

This chapter suggests strategies that a resident can use to assure that an assisted living facility provides the comprehensive care required by law. Assisted living residents deserve no less.

Does the state monitor assisted living facilities?

Yes, but in a limited way. Assisted living facilities are licensed, inspected, and regulated by the Community Care Licensing Division of the California Department of Social Services. In addition to responding to complaints, the state must conduct unannounced inspections of each assisted living facility. However, the state only is required to conduct these inspections ***once every five years*** for most facilities. This guide's authors believe that the present inspection cycle of once every five years is totally inadequate to ensure the basic health and safety of elderly residents, especially since facilities are admitting more residents with greater health care needs than ever before.

The state must conduct annual inspections of an assisted living facility only if a complaint is pending, the facility's license is on probation, or in certain other specified circumstances. The state also must conduct annual unannounced inspections of a random 10% sample of all other assisted living facilities. In short, state monitoring of assisted living facilities is too infrequent to ensure that residents receive adequate care.

How can a problem with an assisted living facility be resolved informally?

If an assisted living resident (or her family member) has a problem with the facility, the resident or family member first should talk to the employees on duty. If the problem persists, the resident or family member should talk to a supervisor, generally the facility's administrator.

When discussing a problem, the resident or family member should listen carefully to the facility's position. Many problems can be resolved through discussion and negotiation if the resident, family member, and facility employee are willing to listen to each other.

Whenever possible, the resident or family member should base her position on legal requirements (for example, the laws explained in this guide).

An assisted living facility cannot refuse to perform a service required by law.

? IF I'M HAVING PROBLEMS, WHAT SHOULD I DO?

- Talk to facility personnel
- Call the Ombudsman
- File a complaint with the Department of Social Services
- Consult a lawyer

What organization will help a resident or family member discuss problems with a facility?

Sometimes a resident or family member will not make any progress by discussing a problem with facility employees. The resident or family member then may wish to call the local Ombudsman Program for assistance. The word "ombudsman" means someone who investigates reported complaints and helps to achieve settlements. The Ombudsman Program, established by federal and state law, provides free assistance to residents and is completely independent from the facility administration. Ombudsmen are usually trained community volunteers working under professional supervision.

Ombudsmen attempt to assure that assisted living residents have their problems heard and rights protected. Ombudsmen visit facilities to investigate resident concerns. Ombudsmen also will investigate problems in response to a telephone call or letter.

If the Ombudsmen are unable to resolve the problem, the resident may request that they file a complaint on the resident's behalf with the Department of Social Services as discussed below.

A person reporting a problem to the Ombudsman Program can keep his name confidential, if desired. Similarly, the person reporting the problem may decide whether to participate in the discussions between the representatives of the Ombudsman Program and facility management.

Ombudsman Program telephone numbers are listed on pages 74–75 of this guide. (The Ombudsman Program always is looking for volunteers; call your local office if you would like to volunteer to help residents of assisted living facilities and nursing homes.)

How can a resident or family member report an assisted living facility to the appropriate government agency?

If a resident or family member does not get satisfactory results by talking with the assisted living facility's employees, the resident or family member may wish to contact the California Department of Social Services. The Department's Community Care Licensing Division

inspects and licenses all assisted living facilities in California.

A resident or family member can make an oral or written complaint (confidential or otherwise) to the Department of Social Services about any assisted living facility in California. The state then must conduct an investigation at the facility, generally within ten days.

After investigating the complaint, the state may (1) force the facility to fix a problem and pay a money penalty to the State, (2) force the facility to fix a problem, or (3) find that the facility has broken no law. If the state finds that the facility must fix a problem, the state must work with the facility to develop a plan of correction. Afterwards, the state must reinspect the facility to ensure that the facility fixes the problem by the due date set forth in the plan of correction. The state also must inform the resident of its proposed plan of action, and share with him a written report of its findings.

Residents or family members requesting an investigation by the Department of Social Services should submit complaints to the state in writing, to assure that the investigator understands the problem and has copies of any necessary documents. The complaint should describe all relevant information in a well-organized manner.

Telephone numbers for the Department of Social Services are listed on pages 76–77 of this guide.

Does the law protect a resident who makes a complaint against a facility?

Yes. It is illegal for an assisted living facility to discriminate or retaliate against a resident or an employee for making a complaint to the Department of Social Services or for having a complaint made on a resident's behalf. Additionally, a resident can choose to keep his name confidential and not disclosed to the facility.

Can a resident or family member go to court to improve facility conditions?

Yes. A resident or family member may file a lawsuit against an assisted living facility to force the facility to comply with the law. For example, if the action (or inaction) of a facility has caused serious physical or emotional harm, a personal injury action may be appropriate.

Similarly, if an assisted living facility has failed to properly safeguard a resident's personal property, the resident could sue the facility for the value of the lost or stolen personal property. Such a lawsuit could be brought in small claims court. (See the Protecting Residents' Property chapter at pages 44–47 for more details on the facility's responsibility for residents' personal property.)

In addition, if a resident or family member can show that an assisted living facility committed unlawful or unfair acts, and that the resident has been injured, she could file a lawsuit against the facility's business practices. In such a lawsuit, the resident or family member could obtain a court order that would force the facility to reform and improve its way of doing business.

A resident or family member considering strategies involving lawsuits should consult an attorney.

What is elder abuse and to whom should it be reported?

Elder abuse is the neglect, exploitation, or "painful or harmful" mistreatment of anyone who is 65 or older. It can involve physical violence, emotional abuse, isolation, abandonment, abduction, or neglect. It also could involve the unlawful taking of an elder's money or property.

If a person suspects that an assisted living resident is the victim of mental, physical or financial abuse, the person should report the suspected abuse to the Ombudsman Program (the telephone numbers of the Ombudsman Program are listed on pages 74–75 of this guide), or to the local law enforcement agency. Assisted living employees and other mandated reporters (physicians, police, clergy, Adult Protective Service workers, home health agency employees) must report all such cases of known or reasonably suspected abuse of assisted living facility residents. The ombudsmen or law enforcement agency must then report the abuse to the California Department of Social Services.

This discussion on resolving problems is based primarily on Title 42 of the United States Code, section 3027(a)(12); the California Business and Professions Code, sections 17200 through 17208; the California Health and Safety Code, sections 1534, 1538, 1548, 1569.35, and 1569.37; the California Welfare and Institutions Code, sections 9700 through 9741, and 15630; and Title 22 of the California Code of Regulations, sections 8010 through 8045, 80052 through 80055, and 87452 through 87455.

IMPORTANT TELEPHONE NUMBERS

California Ombudsman Program
Statewide Crisis Line: (800) 231-4024

County	Telephone
Alameda	(510) 638-6878
Alpine	(209) 532-7632
Amador	(209) 532-7632
Butte	(530) 898-5923 (800) 822-0109
Calaveras	(209) 532-7632
Colusa	(530) 898-5923 (800) 822-0109
Contra Costa	(925) 685-2070
Del Norte	(707) 443-9747
El Dorado	(530) 642-4860
Fresno	(559) 224-9177
Glenn	(530) 898-5923
Humboldt	(707) 443-9747
Imperial	(760) 339-6457
Inyo	(760) 872-4128
Kern	(661) 323-7884 *outside 661 area use* (888) 292-4252, x109
Kings	(559) 583-0333
Lake	(707) 468-5882
Lassen	(530) 223-6191

County	Telephone
Los Angeles	(800) 334-9473
Burbank	(818) 563-1974 (818) 563-9401
Downey	(562) 869-6500
Lakewood	(562) 925-7104
Lancaster	(661) 945-5563
Los Angeles	(213) 617-8957
Pasadena	(626) 793-3510
Reseda	(818) 757-1580
San Dimas	(909) 394-0416
Santa Monica	(310) 899-1483 (800) 822-0109
Madera	(559) 224-9177
Marin	(415) 499-7446
Mariposa	(209) 532-7632
Mendocino	(707) 468-5882 (800) 997-3675
Merced	(209) 385-7402
Modoc	(530) 223-6191 (800) 997-3675
Mono	(760) 872-4128
Monterey	(831) 333-1300
Salinas	(831) 758-4011

IMPORTANT TELEPHONE NUMBERS

Ombudsman Offices (continued)

County	Telephone
Napa	(707) 255-4236
Nevada	(530) 274-2825 (916) 376-8910
Orange	(714) 479-0107
Placer	(530) 823-8422 (916) 376-8910
Plumas	(530) 898-5923 (800) 822-0109
Riverside	(951) 686-4402
Sacramento	(916) 376-8910
San Benito	(831) 429-1913
San Bernardino	(909) 891-3928 (866) 229-0284
San Diego	(858) 560-2507
San Francisco	(415) 751-9788
San Joaquin	(209) 468-3785
San Luis Obispo	(805) 785-0132
San Mateo	(650) 349-7008 *only (650) area, use* (800) 675-8437
Santa Barbara	(805) 967-0499
Santa Maria	(805) 967-0499
Santa Clara	(408) 944-0567
Santa Cruz	(831) 429-1913 (800) 300-6222
Shasta	(530) 223-6191
Sierra	(530) 274-2825 (916) 376-8910
Siskiyou	(530) 223-6191
Solano	(707) 644-4194 (800) 464-1123 (800) 644-4194
Sonoma	(707) 526-4108
Stanislaus	(209) 529-3784
Sutter	(530) 755-2018 (916) 376-8910
Tehama	(530) 898-5923 (800) 822-0109
Trinity	(530) 223-6191
Tulare	(559) 583-0333
Tuolumne	(209) 532-7632
Ventura	(805) 656-1986 (800) 640-4661
Yolo	(530) 668-5775 (916) 376-8910
Yuba	(530) 755-2018 (916) 376-8910

IMPORTANT TELEPHONE NUMBERS

California Department of Social Services

County	Telephone
Alameda	(650) 266-8800
Alpine	(559) 243-8080
Amador	(209) 948-7343
Butte	(530) 895-5033
Calaveras	(209) 948-7343
Colusa	(530) 895-5033
Contra Costa	(650) 266-8800
Del Norte	(707) 588-5026
El Dorado	(916) 263-4700
Fresno	(559) 243-8080
Glenn	(530) 895-5033
Humboldt	(707) 588-5026
Imperial	(619) 767-2300
Inyo	(559) 243-8080
Kern	(559) 243-8080
Kings	(559) 243-8080
Lake	(530) 895-5033
Lassen	(530) 895-5033
Los Angeles	(818) 596-4334 (310) 568-1807 (323) 980-4934
Madera	(559) 243-8080
Marin	(707) 588-5026
Mariposa	(559) 243-8080

County	Telephone
Mendocino	(707) 588-5026
Merced	(559) 243-8080
Modoc	(530) 895-5033
Mono	(559) 243-8080
Monterey	(408) 277-1289
Napa	(707) 588-5026
Nevada	(530) 895-5033
Orange	(714) 703-2840 (619) 767-2300
Placer	(530) 895-5033
Plumas	(530) 895-5033
Riverside	(951) 782-4207 (619) 767-2300
Sacramento (Northern)	(916) 263-4700
Sacramento (Southern)	(209) 948-7343
San Benito	(408) 277-1289
San Bernardino	(951) 782-4207 (619) 767-2300
San Diego	(619) 767-2300
San Francisco	(650) 266-8800
San Joaquin	(209) 948-7343
San Luis Obispo	(805) 682-7647 (818) 596-4334
San Mateo	(650) 266-8800

Department of Social Services (continued)

County	Telephone
Santa Barbara	(805) 682-7647 (818) 596-4334
Santa Clara	(408) 277-1289
Santa Cruz	(408) 277-1289
Shasta	(530) 895-5033
Sierra	(530) 895-5033
Siskiyou	(530) 895-5033
Solano	(707) 588-5026
Sonoma	(707) 588-5026
Stanislaus	(209) 948-7343
Sutter	(530) 895-5033
Tehama	(530) 895-5033
Trinity	(530) 895-5033
Tulare	(559) 243-8080
Tuolumne	(209) 948-7343
Ventura	(805) 682-7647 (818) 596-4334
Yolo	(530) 895-5033
Yuba	(530) 895-5033

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Bet Tzedek, The House of Justice, provides free legal assistance to thousands of people who would otherwise be denied access to the legal system underpinning our democracy.

Bet Tzedek was founded in 1974 by a few individuals who sought to act upon a central tenet of Jewish law and tradition, which appears in the Bible: *"Tzedek, tzedek tirdof*—Justice, justice you shall pursue." This doctrine decrees that it is the duty of all men and women to advocate the just causes of the poor and helpless.

Although Bet Tzedek remains intent on ensuring that the legal needs of the Jewish poor are met, we recognize that it is our duty to serve the entire community. For this reason, Bet Tzedek has always provided assistance to all eligible needy residents of Los Angeles County, regardless of their racial, religious or ethnic background.

Indeed, at The House of Justice, we believe that all of the groups in our wonderfully diverse society are strengthened when bridges are built that bring us together in a common, just cause. For the people who are Bet Tzedek—the lawyers and non-lawyers, staff members and volunteers, contributors and clients—our mission, therefore, is to pursue equal justice for all.

Assisted Living Companion

An Easy-to-Use Guide to Assisted Living in California

This guide and its revision are funded in part by the
Archstone Foundation and the City of Los Angeles Department of Aging.

*Bet Tzedek is funded in part by
The Jewish Federation of Greater Los Angeles,
United Way, the State Bar of California,
the City of West Hollywood, the City of Los Angeles
and the County of Los Angeles.*

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