ASSISTED LIVING COMPANION

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

Prepared by Attorneys of BET TZEDEK LEGAL SERVICES
Assisted Living Companion
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Bet Tzedek Legal Services is a non-profit, public interest law center which 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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IMPORTANT NOTE
Every attempt was made to ensure the accuracy of the information in this guide. Bet Tzedek Legal Services reserves the right to revise the guide at any time—without notice—and assumes no liability for damages incurred directly or indirectly as a result of errors, omissions, or discrepancies.

Since relevant laws change from year to year, please make sure to review the most recent edition of this guide. Resources identified in this guide may be useful to the reader. Such references do not constitute an endorsement by Bet Tzedek Legal Services of the programs or services of those enterprises.
INTRODUCTION

Alison Everhardt is concerned about her father. His arthritis has reached the point where he can’t brush his teeth anymore and is having a difficult time walking around his apartment. Alison knows that her dad is not ready for a nursing home, but she knows he can’t stay at his place anymore. At some point, she worries, he’ll fall and hurt himself. What are her options? Alison is not real, but her situation is. Thousands of families face similar scenarios each year in California. They eventually find that their needs can best be met by the services provided by an assisted living facility, or ALF.

How can you identify a quality assisted living facility? What resources are available to help pay for assisted living facility care? How can you ensure the best care possible for your loved one?

This guide provides a starting point to answer these and other questions, including how to:

- Find an assisted living facility
- Pay for assisted living facility care
- Ensure quality of care
- Make appropriate healthcare decisions
- Resolve problems involving assisted living facilities

Remember, knowledge is power. This guide is intended as a reference source for assisted living residents and their families, friends, and advocates. Use this guide in conjunction with visits to assisted living facilities, discussions with representatives of the local Ombudsman Program, and, if necessary, consultations with a qualified attorney. The more information you have about assisted living facilities and your rights, the easier it will be for you to make good decisions and advocate for better care.

Bet Tzedek’s Assisted Living Companion is based on California law. If you live in a state other than California, make sure that you check the laws of your own state. In addition, relevant laws change from year to year. Always consult local experts to supplement and verify the information contained in this guide and visit Bet Tzedek at www.bettzedek.org/resources for updates.
CHAPTER 1
FINDING THE RIGHT FACILITY
Sound familiar? If your loved one may need ongoing assistance with activities of daily living such as walking, bathing, or grooming, or if you are not physically or mentally able to continue living in your current residence, the solution may involve moving into an assisted living facility.

This chapter provides an overview of long-term care options, and then focuses on how to select an assisted living facility that meets your needs or the needs of your loved one.

**Long-Term Care Options**
Options for long-term care have increased dramatically over the past few decades. Older adults and their families now have many choices for care, including the following:
- Remaining at home
- Assisted living
- Continuing care retirement communities
- Nursing homes

**Remaining at Home**
Various services can help older adults continue living in their home or the home of a family member. Visiting nurses and home health agencies can provide health care at home. Home care workers can provide assistance with dressing, cooking, cleaning, and chores. Community groups can provide...
home-delivered meals and transportation to medical appointments. Adult daycare programs can provide care during the day while family members are at work. Case management can also perform an in-home assessment and develop a comprehensive plan of services to help an elder remain at home.

Many cities provide free or low-cost repairs or modifications to the homes of older or disabled adults who cannot afford to pay on their own. Medicare and Medicaid—called Medi-Cal in California—may pay for certain other home care expenses.

**Many cities provide free or low-cost repairs or modifications to the homes of older or disabled adults who cannot afford to pay on their own.**

**Paying for Home Care with Medicare**
The Medicare program pays for home health care for Medicare beneficiaries who are homebound and require skilled nursing care or rehabilitative therapy. All services are limited to *part-time or intermittent care*. The resident’s physician must review the person’s condition at least every 60 days to determine whether he still needs skilled care.

Medicare also pays for hospice and end-of-life comfort (or *palliative*) care for Medicare beneficiaries. The patient’s physician must certify that the patient is terminally ill with six months or less to live and that the patient wants to receive comfort care instead of curative care.

**Medicare pays for hospice and end-of-life comfort (or palliative) care for Medicare beneficiaries.**

**Paying for Home Care with Medi-Cal**
Medi-Cal is designed to help low-income elderly and disabled persons. The Medi-Cal program pays for skilled nursing and rehabilitative care in an individual’s home. Medi-Cal also pays for additional services to assist older adults to remain at home. These services include:

- Aide workers through the In-Home Supportive Services Program (IHSS)
- Case management, respite care, and home modifications through the Multipurpose Senior Services Program (MSSP)
- Adult Day Health Services (CBAS program)

Additional information about these topics is available from the Centers for Medicare and Medicaid Services official government publications, “Medicare and Home Health Care” and “Medicare Hospice Benefits.” To obtain copies of these booklets, call 1-800-MEDICARE (633-4227) or visit www.medicare.gov. (Search for “medicare and home health care” or “medicare hospice benefits.”)
Keep in mind, though, that Medi-Cal and its services are available only to individuals with limited finances.

**The Medicare and Medi-Cal programs both pay for skilled nursing and rehabilitative care in an individual’s home.**

**Assisted Living**
Assisted living is for people who have difficulty living at home but do not need 24-hour nursing care. Assisted living facilities provide residents with a room, meals, housekeeping, supervision, medication management, and assistance with activities of daily living. Activities of daily living include feeding, dressing, toileting, and bathing. Assisted living facilities are not required to have physicians, nurses, or nurse assistants on staff, but some medical services may be provided by a home health agency working with the facility. In California, assisted living facilities that serve people age 60 or older are licensed as Residential Care Facilities for the Elderly (RCFE). Similar facilities serving adults under age 60 are licensed as Adult Residential Facilities. Smaller six-bed facilities are sometimes called Board and Care Homes.

**Continuing Care Retirement Communities**
Continuing Care Retirement Communities (CCRCs) provide housing (independent living space), assisted living, and nursing care, usually in one location. Residents typically pay a large entrance fee at admission. They also sign a contract that may entitle them to receive appropriate levels of care throughout their lifetime.

**Fundamentals of Assisted Living**
Assisted living is an intermediate step between independent living and nursing homes. It can provide people who need assistance with activities of daily living the additional care and support to enjoy an active, engaged, and fulfilling quality of life.
An assisted living facility is a residence for older persons that provides services along with room and board. These facilities are sometimes called retirement homes, rest homes, retirement hotels, or board-and-care homes. Each facility chooses its name in part for its potential attractiveness to consumers. The name does not indicate anything about the facility’s quality or capabilities. A facility might refer to itself as an assisted living facility even if it does not have a license and provides few or no services.

California law refers to assisted living facilities as *residential care facilities for the elderly*, the term used in facility licenses. This guide uses the term *assisted living facility* rather than the legal term *Residential Care Facility for the Elderly* (RCFE) because assisted living facility is the term used most commonly by the general public.

**TIP:** Do not make any decisions based on a facility’s name.

**ASK THE EXPERTS—WHAT IS ‘ASSISTED LIVING’?**

*I keep hearing the term “assisted living,” but do not know what it means. What is it?*

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

**Staffing**

Unlike a nursing home, an assisted living facility in California is not required to provide a certain number of staff per resident. Instead, state law requires that a facility provide a staff sufficient to “provide the services necessary to meet resident needs.”

**Required Services**

An assisted living facility must provide its residents with a room, meals, activities, and basic services. If necessary, the facility must assist residents with activities of daily living such as eating, bathing, dressing, grooming, and using the toilet. The facility also must monitor residents’ physical and mental health.

If necessary the assisted living facility must assist residents with storing and distributing medication for self-administration.
An assisted living facility is required to have a certified administrator. The administrator is required to hire and train qualified staff. The administrator also must ensure that staff provide required services to residents “with appropriate regard for the residents’ physical and mental well-being and needs.”

Assisted living facilities are not required to have physicians or nurses at the facility or on staff. Facilities can admit residents who need medical care as long as the care is provided by an *appropriately skilled professional*. That professional may be a facility employee trained by a home health nurse to perform a specific task or someone provided by a home health agency who can perform that task.

**TIP:** If you need nursing services at an assisted living facility, check with a home health agency to find out whether it will provide the services, and whether Medicare will pay for them.

A small number of facilities do have on-site nurses. By making nursing services available, those facilities can admit people with more significant healthcare needs than facilities without such professional staff.

Some residents receive nursing services through home health agencies. The agency sends a nurse or nurse aide to the facility in the same way that it would send someone to a person’s private home. The agency is hired by the resident, not by the facility, though many facilities will refer residents to a particular

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### HOW ASSISTED LIVING FACILITIES DIFFER FROM NURSING HOMES

**Characteristics of assisted living facilities:**
- Generally for residents at least 60 years old
- Nonmedical care focused on assistance with activities of daily living
- Care staff does not need to be medically licensed
- Limited healthcare services may be provided by nurses or other healthcare professionals
- Room, board, basic services, activities, and supervision
- Licensed by the California Department of Social Services Community Care Licensing

**Characteristics of nursing homes:**
- Residents of any age who need onsite nursing care
- Medical care
- 24-hour nursing care provided by registered nurses, licensed vocational nurses, or certified nursing assistants
- Room and board
- Licensed by the California Department of Public Health Licensing and Certification
agency. The services of a home health agency are usually paid for by the resident’s Medicare coverage.

**Trends in Care**
More and more assisted living facilities are admitting and retaining residents with serious health conditions and specializing in dementia care. For example, an assisted living facility may be able to care for a resident who cannot turn in bed, is incontinent, has severe dementia, or is terminally ill.

In many cases, assisted living facilities care for individuals who in the past would have had only one option—a nursing home. This increased capability of assisted living facilities has advantages and disadvantages.

On the plus side, older adults now have more choices about where to live and receive care. On the negative side, the quality of care in some facilities does not meet acceptable standards because laws and government oversight have not kept pace with the changing marketplace. The cost of assisted living care can be too steep for many people.

**Key Factors in Selecting an Assisted Living Facility**
After an individual has decided that an assisted living facility is the appropriate long-term care option, he needs to select a facility that will best meet his needs.

Searching for an assisted living facility can be difficult. Most individuals know very little about assisted living, and there are a wide variety of choices. No matter the situation, searching carefully for the best available facility can prevent many future problems.

Let us take a look at several key factors in the selection of an assisted living facility, including location, cost, license status, official records, visiting a facility, and referrals by professionals.

**Location**
Just as in house-hunting, location is a key factor. If possible, select an assisted living
facility located near the resident’s family and friends. Residents with frequent visitors generally do better physically and emotionally than residents with fewer visitors. If a person is unable to live in a facility near family members and friends, check to see whether a local church, synagogue, or senior center can send people to visit the resident.

Find out whether the resident prefers living in a quiet neighborhood. A facility within easy walking distance to stores or restaurants may be on or near a busy street. Either way, do not focus too much on the neighborhood. A good facility may be located in a less desirable neighborhood, and vice versa.

Residents with frequent visitors generally do better physically and emotionally than residents with fewer visitors.

Cost
Public funding for assisted living from Medi-Cal and Supplemental Security Income (SSI) is extremely limited. Most residents pay for care through savings and monthly income. With the average monthly cost of assisted living at about $3,500—even more for specialized dementia care—it might not be possible for most consumers or their families to afford assisted living care. (See Chapter 2, Paying for Care, page 18.)

License Status
A prospective resident should make sure that the facility is licensed by the State of California. If the facility is not licensed, then no government agency is monitoring its services. A facility is operating illegally if it provides care and supervision to residents without a license.

TO LEARN MORE

To find out whether a facility is licensed, contact the Regional Office of the California Department of Social Services (phone numbers are listed in Appendix B) or visit the department’s website at www.cclsd.ca.gov. (Click “Find Licensed Care” in the left-hand navigation bar. Select Residential Care Facility for the Elderly in the first drop-down box.)

Official Records
The prospective resident should examine the assisted living facility’s inspection records maintained by the California Department of Social Services (CDSS). The inspection records summarize the findings of all inspections conducted at each facility by the state. The
inspection records also note financial penalties imposed against the facility in response to particularly blameworthy conditions.

**Inspection records summarize the findings of all inspections and note financial penalties imposed against the facility.**

All inspection records relating to a particular facility must be made available immediately on the request of any consumer at the appropriate Regional Office of the CDSS.

In addition, certain state records must be made available at the assisted living facility itself. Each facility must place in a conspicuous place two categories of records:

- All records from the most recent inspection
- All records from the previous 12 months in which a complaint against the facility was verified by an inspector

Unfortunately, California does not currently post its inspection records online, and the website of the CDSS offers a minimal amount of information. For each facility, the website lists only the license status, address, telephone number, and maximum number of residents, along with contact information for the appropriate office of the CDSS.

**Visiting a Facility**

A prospective resident should visit each assisted living facility under consideration and look, listen, and ask questions.

**TIP:** Talk to current residents and their visitors. The residents and visitors should know better than anyone else the facility’s pluses and minuses.

Focus on the facility’s services and how staff interact with residents 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.

**TIP:** Try to visit the facility several times. Visit on a weekday, during a weekend, at night, and during a meal. Check to...
see whether residents’ needs are met during weekends and nights when many facilities maintain a smaller staff. Look whether residents are eating in the dining room rather than in their rooms. Is food delivered hot? Are residents promptly assisted if they need help with eating?

Facility Staff
A larger facility may have a full-time admissions coordinator or marketing director who will meet and greet prospective residents. In those facilities, the prospective resident should address questions to the admissions coordinator or marketing director, and also the employee responsible for day-to-day resident care, often called the administrator. The administrator will probably know more about how the facility actually operates, and it is the administrator’s attitude that likely sets the tone for the rest of the staff.

In a small facility, such as one with six or fewer residents, the facility’s administrator may also serve as the admissions coordinator, cook, and even a care provider. Questions will be addressed to that individual out of necessity, because there are few other staff members available.

**The facility administrator knows best how the facility operates, and her attitude likely sets the tone for the rest of the staff.**

Facilities with higher staff-to-resident ratios generally provide better care. A prospective resident should ask questions about staffing, such as the following:

- How many direct-care staff are onsite during the day, evenings, and on weekends?
- How often is the administrator onsite?
- Who at the facility is responsible for cleaning rooms, guiding activities, or arranging transportation?
- 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 numerous employees who have been at the facility for several years.

Annual staff turnover rates of 100% or higher are typical for direct-care staff due to

FIRE SAFETY
Prospective residents should ask facility staff about fire safety. Fire safety features at facilities vary depending on the facility’s age, size, layout, resident population, and owner. Many buildings are not well-constructed for fire control. Some buildings were built when fire safety construction standards were weaker than they are now. Important protections include alarms, extinguishers, sprinkler systems, reinforced doors and walls, and staff training.
the difficulty of the tasks they perform and the generally low wages paid. Prospective residents 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.

Better facilities will provide meaningful training for direct-care staff and will have numerous employees who have been at the facility for several years.

Availability of Services
Prospective residents should ask questions about their service needs and preferences. For instance, say a prospective resident wants to be able to invite friends on Tuesday afternoons for a long-standing card game. Or perhaps the individual needs assistance for a daily walk around the block. The facility’s response to those kinds of requests may prove helpful in two ways.

First, it will let prospective residents know whether the facility can meet their requests. Second, it will provide a glimpse into the facility’s attitude toward residents and their requests. If the facility seems willing to meet individual requests, it is a good sign. If the facility staff seems hostile to or baffled by an individual request, the prospective resident may be better off looking at other facilities.

TIP: Ask for what you want! There is no better way to find out whether a facility will be willing to meet your needs and preferences.

ASK THE EXPERTS—QUALIFICATIONS FOR DIRECT-CARE STAFF

My dad is in an assisted living facility, and I am concerned about the qualifications of the staff. Does California have any requirements?

Yes, but they are minimal. Facility staff must be at least 18 years old, pass a criminal background check, and receive just ten hours of initial training and four hours of annual continuing education.

REVIEWING THE ADMISSION AGREEMENT

The prospective resident should request and read the admission agreement used by the assisted living facility. Review carefully language regarding payment, services, evictions, and resident rights. Some admission agreements contain provisions harmful to residents and their families.

A facility must post either a copy of its admission agreement or a notice of the agreement’s availability. The facility must provide a blank copy of its admission agreement upon request, but may charge for copying or mailing costs. (See Chapter 3, Admission to a Facility, page 28.)
Referrals by Professionals
A prospective resident may wish to get recommendations for facilities from healthcare professionals, geriatric care managers, social workers, or agencies serving the needs of seniors such as the Alzheimer’s Association. Senior centers may also be a source of information. It is best to use these recommendations together with visits to facilities and other key factors discussed in this chapter.

TIP: Contact your local Long-Term Care Ombudsman Program for referrals to assisted living facilities. The ombudsman will make referrals based on the needs of a prospective resident, but will not give recommendations. Ombudsmen are resident advocates and do not receive payments from facilities. For phone numbers of local Ombudsman Programs, see Appendix A.

ASK THE EXPERTS—FLUCTUATING CARE NEEDS

My wife has multiple sclerosis, and I can no longer care for her at home. If she moves into an assisted living facility, can it care for her as her disease progresses?

Maybe, but maybe not. Prospective residents and their family members often assume wrongly that residents will be allowed to stay in the assisted living facility for the rest of their life, or at least until they become extremely ill. That assumption is true in some facilities but false in most others. Assisted living facilities are prohibited from caring for residents with certain medical conditions, such as stage 3 or stage 4 pressure ulcers, or for residents requiring nasogastric tubes or 24-hour skilled nursing care. There are some exceptions, however, especially for residents receiving hospice services.

Assisted living facilities can base an eviction of a resident on its inability to meet the resident’s changed needs. In refusing to retain a resident with a certain medical condition, however, the assisted living facility may be discriminating illegally based on the resident’s condition. This refusal may be challenged in court under the Americans with Disabilities Act.

To avoid such issues, prospective residents should make sure that they understand the types of care the facility will or will not make available. For instance, if a 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. The facility’s admission agreement should explain clearly what types of care can and cannot be provided at the facility.
Referral and placement agencies can help find facilities, though the quality of services varies greatly. Do not automatically rely on these agencies. Some services may work from inadequate or out-of-date lists. Some services may receive money from the assisted living facility for each resident placed at that facility. Use these services with caution; they have an incentive in placing a resident in a facility that will pay for the referral even though that facility may provide substandard care.

Final Thoughts
Searching for an assisted living facility is not easy, particularly considering the emotions involved and the limited time typically available. Unfortunately, no scientific formula exists to determine the “best” facility for any person.

Although internet sites and referrals can provide helpful information, it is only a starting point for a search. To the extent possible, set your sights high, and do not be shy about seeking competent, personalized care.

*Set your sights high, and do not be shy about seeking competent, personalized care.*
RESOURCES

For more information on topics in this chapter, consult the following agencies, print and online resources, and the legal citations on which the information is based.

Agencies

• Alzheimer’s Association: http://www.alz.org, (800) 272-3900

• Bet Tzedek Legal Services: www.bettzedek.org, (323) 939-0506

• California Advocates for Nursing Home Reform: www.canhr.org, (800) 474-1116

• California Department of Social Services, Community Care Licensing Division: www.cclrd.ca.gov, (916) 657-2592. (For phone numbers of Regional Offices, see Appendix B.)

• California Long-Term Care Ombudsman Program: www.aging.ca.gov/programs Crisis Line (800) 231-4024. (For phone numbers of local Ombudsman Programs, see Appendix A.)

Print

• Bet Tzedek Legal Services, Caregiver Companion (print and download versions): www.bettzedek.org/resources, (323) 549-5897

• Bet Tzedek Legal Services, Nursing Home Companion (print and download versions): www.bettzedek.org/resources, (323) 549-5897

• Centers for Medicare and Medicaid Services, “Medicare and Home Health Care” and “Medicare Hospice Benefits,” (800) MEDICARE (633-4227) or www.medicare.gov (search: “medicare home health” or “medicare hospice benefits”)
Online

- California Advocates for Nursing Home Reform: www.residentialcareguide.org
- California Advocates for Nursing Home Reform: www.canhr.org/CCRC
- California Department of Public Health, Licensing and Certification Division: www.cdph.ca.gov/programs/LnC
- California Department of Social Services: www.calccrc.ca.gov
- California Department of Social Services, Community Care Licensing Division: www.cclld.ca.gov

(Click “Find Licensed Care” in the left-hand navigation bar. Select Residential Care for the Elderly in the first drop-down box, as shown at right.)

Legal Citations

The discussions in this chapter are based primarily on the California Health & Safety Code, sections 1569.2, 1569.33, 1569.38, 1569.45, 1569.61, 1569.725, and 1569.881; Title 22 of the California Code of Regulations, sections 87101, 87105, 87405, 87411, and 87605 through 87633.
While assisted living generally is less expensive than nursing home care, monthly rates vary dramatically and depend on a variety of factors. The majority of California assisted living residents pay privately for their care. Long-term care insurance covers only a very small percentage of people. Limited government payments are available for low income persons to cover some services provided at assisted living facilities.

This chapter examines which government programs can help residents pay for care, including Supplemental Security Income, Medicare, and Medi-Cal.

ASSISTED LIVING COSTS IN CALIFORNIA

California assisted living facilities typically charge from a low of around $1000 a month for a resident on Supplemental Security Income (SSI) to more than $9,000 a month, depending on location, accommodations, services, and other factors. In 2012, for example, the average monthly base rate in California was $3,867.

SSI

Supplemental Security Income (SSI) is a joint federal and state program that guarantees a minimum monthly income for elderly or disabled individuals with limited income and resources. SSI is administered by the Social Security Administration. The SSI rates discussed in this chapter are effective as of January 1, 2013, and generally increase slightly at the beginning of each year. (For current SSI rates, visit Bet Tzedek at www.bettzedek.org/resources.)

The SSI program helps assisted living residents in two ways. An assisted living resident who receives SSI is entitled to a special Non-Medical Board and Care rate that is higher than the rate for individuals living in homes or apartments. Additionally, a state regulation limits the facility’s monthly charge to an amount that allows the resident to pay the facility and maintain a personal needs allowance.

SSI for Individuals

To qualify for SSI, an applicant must be at least 65 years old or disabled, and meet income and resource limits. The resource limit for an individual is $2,000. In 2013, the income level for an individual living in a residential facility to be eligible for SSI is $1,142.

If an assisted living resident receives no income other than that from SSI, the SSI program will pay the resident the SSI monthly benefit rate of $1,122. Of that $1,122, the resident generally must pay $993 monthly to the facility. The resident may keep the remaining $129 as a monthly allowance.

If a resident receives income other than SSI such as a pension or social security, the SSI program will supplement the other income, and the total monthly payment (SSI plus the other source of income) generally increases by $20 to $1,142. In that instance, the resident
May keep a monthly allowance of $129 or $149, depending on whether the admission agreement requires the resident to pay the “extra” $20 to the facility.

TIP: Remember that the SSI program has strict income requirements. If a resident’s monthly income exceeds the SSI monthly income limit—currently $1,142—the resident cannot receive SSI, even if she has no savings. Unlike Medi-Cal, SSI does not allow over-income individuals to become eligible by spending their “extra” income.

**HOW IS SSI USED TO PAY FOR ASSISTED LIVING?**

To show where a monthly SSI check goes, we’ll use a fictitious person, Mary Adelson. Mary is a 70-year-old widow with no income or assets and who lives in an assisted living facility. The SSI program will pay Mary the SSI monthly benefit rate of $1,122. She must pay the facility $993 and may keep the remaining $129 for her personal use.

If Mary received a $500 pension rather than no additional income, the SSI program would pay her $642 ($1142 – $500 = $642). Mary would then be able keep $149 (instead of $129) for her personal use, unless the facility admission agreement required her to pay the additional $20 to the facility, for a monthly payment of $1,013 (instead of $993).

**ASK THE EXPERTS—CHARGING MORE THAN THE SSI MONTHLY RATE**

*I’m an SSI recipient at an assisted living facility, and the facility wants me to pay more than the SSI monthly facility rate. Can it do that?*

In general, no. State regulations prohibit an assisted living facility from charging an SSI recipient more than the SSI facility rate of $993 monthly. However, a facility may be able to charge an SSI recipient an extra $20 a month if the individual receives SSI as a supplement to other income, and if the resident knowingly agrees in a written admission agreement to pay the extra $20 to the facility each month.

A facility can also charge an SSI recipient an extra amount each month ($48.20 in 2013) for a private room if the resident chooses in a written admission agreement to take a private room rather than an available double room.

**SSI for Married Couples**

When both a husband and a wife are admitted into an assisted living facility, the couple becomes eligible for SSI if three conditions are met:

1. Both spouses are either at least 65 years old or disabled.
2. The couple together possess under $3,000 in countable assets.
3. The couple together receive a total monthly income under $2,284.
When the couple has resided together at 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. This allows each eligible spouse to keep up to $2000 in countable assets (the individual resource limit) rather than the couple resource limit of $3000.

If only one spouse of an eligible couple lives in an assisted living facility, federal regulations and SSI guidelines state that spouses living apart must be treated by the SSI program as single individuals. As in the example above, each eligible spouse would have an individual resource limit of $2000 rather than the couple resource limit of $3000.

Some spouses on SSI may each be able to keep up to $2000 in countable assets instead of the couple resource limit of $3000.

SSI Resource Rules
The SSI program makes payments only to persons or couples with limited resources. The resource limits are $2000 for an individual and $3000 for a couple. Resources include cash, bank accounts, real estate, investments, and other items. Countable resources over these limits will make a person or couple ineligible for SSI.

The SSI program, however, considers many resources unavailable and will not count them against a resident’s resource limits. For example, the value of a house is considered unavailable if the house is the applicant’s principal residence.

Furthermore, the house can be considered an unavailable principal residence even if the applicant is living in an assisted living facility. SSI will disregard the house’s value if the applicant states on her SSI application that she intends to return to the house in the future.

Resources considered unavailable include:

- Principle residence
- Automobile used for transportation
- Household goods
- Personal effects
- Burial spaces
- Life insurance policies and burial funds if the value of the policy or fund does not exceed $1,500
**TIP:** A house is not counted as a resource by SSI if an assisted living resident says that she intends to return to it on her SSI application.

**Supplementing SSI Payments**

Assisted living facilities are required to provide services to SSI-recipients for the set SSI monthly facility rate. Because the SSI rate is low, fewer facilities are admitting individuals eligible for SSI. To encourage facilities to admit SSI-recipients, the California Department of Social Services modified regulations to explicitly state that family members of an SSI-recipient are not prohibited from making a voluntary contribution to the facility.

Unfortunately these voluntary contributions have become more common in recent years. Facilities may pressure family members to make extra payments. Family members should resist pressure from the facility to make these extra contributions unless they truly wish to do so.

**TIP:** If a family member wishes to supplement a resident’s SSI payment to the facility, she should designate the contribution for services other than food or shelter. Otherwise the contribution could lead to a loss of eligibility or a reduction in the amount of the resident’s SSI benefit.

**Medicare**

Medicare is a health insurance program administered by the federal government. It pays for medical expenses for eligible individuals. Since an assisted living facility is not licensed to provide medical care, Medicare does not pay for assisted living. However, Medicare will pay for licensed healthcare professionals to provide medical services in an assisted living facility. Generally these services are provided through an outside agency such as a home health agency, or, in the case of a terminally ill resident, a hospice agency.

**Medi-Cal**

The Medicaid program, referred to in California as Medi-Cal, is a health insurance program administered by California and the federal government for individuals with little or no money. Medi-Cal recipients may also be enrolled in Medicare, but the two programs are not related. The Medi-Cal program is
a needs-based program, and has very strict eligibility requirements. People on SSI are automatically eligible for Medi-Cal.

**TO LEARN MORE**

The Medi-Cal program is administered by the California Department of Health Care Services (DHCS). For more information regarding Medi-Cal eligibility and programs, contact CDSS at (800) 541-5555 or visit www.dhcs.ca.gov.

Similar to Medicare, the Medi-Cal program pays for *medical* expenses for eligible individuals. Since an assisted living facility is not licensed to provide medical care, Medi-Cal does not pay for assisted living except for one limited program called the Assisted Living Waiver. Medi-Cal will pay for licensed healthcare professionals to provide medical services in an assisted living facility. Generally these services are provided through home health or hospice agencies.

**Assisted Living Waiver Program**
The Medi-Cal program will help pay for assisted living expenses for a small number of qualified individuals through a demonstration project it began in 2006 called the Assisted Living Waiver, or ALW. The project was designed to test whether assisted living as a Medi-Cal benefit could be an effective alternative to nursing home placement. The ALW was renewed for five years, starting March 1, 2009.

Under the ALW, Medi-Cal will pay for qualified persons to receive services in certain assisted living facilities in Fresno, Los Angeles, Riverside, Sacramento, San Bernardino, San Joaquin, and Sonoma counties. To be eligible for the ALW, individuals 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.

**TIP:** Medi-Cal recipients may be able to receive care management, transportation, personal hygiene, and other services at an assisted living facility through the Multipurpose Senior Service Program (MSSP) waiver, a program administered by the California Department of Aging (CDA). For more information, see the CDA website at www.cda.ca.gov (search: “MSSP”), or call (800) 510-2020.

**TO LEARN MORE**

Additional information regarding the Assisted Living Waiver program can be found at the California Department of Health Care Services website at www.dhcs.ca.gov (search: “assisted living waiver”) or by calling (916) 552-9105.

**Medi-Cal Share of Cost**
Low-income residents of assisted living facilities may not have enough money to pay
for medical expenses. To enable a resident to access Medi-Cal benefits, Medi-Cal will take into account the resident’s monthly payment to the facility in the calculation of the resident’s monthly co-pay (called share of cost).

An assisted living resident who is an SSI-recipient is automatically eligible for Medi-Cal without any share of cost. Some residents may not qualify for SSI because their incomes are too high, but may still be eligible for Medi-Cal with no share of cost through the Aged and Disabled Federal Poverty Level Program.

As of April 1, 2013, Medi-Cal will pay for medical services with no share of cost if a non-married Medi-Cal recipient has a monthly income of up to $1,208. (Eligibility levels for the Aged and Disabled Federal Poverty Level program are usually established in April and increase slightly each year. For current rates, visit Bet Tzedek at www.bettzedek.org/resources.)

In determining a person’s income level for the no share of cost program, Medi-Cal allows a person to deduct the cost of healthcare premiums. Medi-Cal recipients whose income is slightly above $1,208 may wish to consider purchasing additional health insurance (medical, dental, or vision) to reduce their income so they may qualify for no share of cost Medi-Cal.

TIP: Individuals whose income is slightly more than $1,208 per month can purchase medical, dental, or vision insurance and deduct the cost of the premiums from their monthly income to qualify for Medi-Cal with no share of cost.

A resident whose monthly income is over $1208 (and thus too high to qualify for Medi-Cal’s no share of cost program) will generally have a share of cost. The share of cost is the amount by which the resident’s monthly income exceeds the maintenance allowance. The allowance is equal to $935, or the resident’s monthly facility fee plus $20, whichever is greater.

TIP: Other than the tiny Assisted Living Waiver Program, Medi-Cal does not pay the costs of assisted living.

For example, assume that a resident has a monthly income of $1,500. Her monthly Medi-Cal share of cost would be $1,500 minus her maintenance allowance of $935, or $565. If the facility costs $1,400 a month, her share of cost would be reduced from $565 to $80 ($1,500 – $1,400 – $20 = $80).
RESOURCES
For more information on topics in this chapter, consult the following agencies, print and online resources, and the legal citations on which the information is based.

Agencies
• Bet Tzedek Legal Services: www.bettzedek.org, (323) 939-0506
• California Advocates for Nursing Home Reform: www.canhr.org, (800) 474-1116
• California Department of Social Services, Community Care Licensing Division: www.ccd.ca.gov, (916) 657-2592. (For phone numbers of Regional Offices, see Appendix B.)
• California Long-Term Care Ombudsman Program: www.aging.ca.gov/programs (search: “LTCOP/contacts”), Crisis Line (800) 231-4024. (For phone numbers of local Ombudsman Programs, see Appendix A.)

Online
• California Advocates for Nursing Home Reform RCFE Fact Sheet, “Assisted Living Waiver”: www.canhr.org/factsheets
• California Advocates for Nursing Home Reform RCFE Fact Sheet, “Board & Care Medi-Cal Deduction”: www.canhr.org/factsheets
• California Advocates for Nursing Home Reform RCFE Fact Sheet, “Supplemental Security Income (SSI) in Residential Care Facilities”: www.canhr.org/factsheets
• California Department of Aging, Multipurpose Senior Service Program: www.cda.ca.gov (search: “MSSP”), (800) 510-2020
• California Department of Health Care Services, Assisted Living Waiver Program: www.dhcs.ca.gov (search: “assisted living waiver”), (916) 552-9105
• California Department of Health Care Services (DHCS): www.dhcs.ca.gov, (800) 541-5555
• Social Security Administration, Supplemental Security Income: www.socialsecurity.gov/ssi, (800) 772-1213
Legal Citations
The discussions in this chapter are 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, 416.1112(c)(3), 416.1124, 416.1132, 416.1145, 416.1160 through 416.1163, 416.1202, 416.1205, and 416.1210 through 416.1218; California Welfare and Institutions Code, sections 9560, 11006.9, 12000 through 12351, 14005.40, and 14132; Title 22 of the California Code of Regulations, sections 50203, 50515, 50549.2, 50555.2, 50603, 87224, 87464, and 87507; Social Security Program Operations Manual System (POMS), sections SI 01140.205, SI 01320.450, and SI 01330.100; California Department of Health Services All County Welfare Directors Letters #00-56 (November 15, 2000), #02-38 (June 28, 2002) and 12-10 (March 14, 2012); 2011 MetLife Market Survey of Nursing Home, Assisted Living, Adult Day Services, and Home Care Costs, November 2012.
Admissions to assisted living facilities often occur during stressful times for a resident and family members. As a result, residents often are inclined to agree to whatever conditions the facility sets in its admission agreement.

Resist this inclination.

Some facilities request illegal or unfair conditions that, if accepted, could lead to serious problems in the future. State laws provide many protections to assisted living residents during the admission process. This chapter describes the rights of assisted living residents in connection with admission, including admission decisions, the admission process, admission agreements, payment provisions, and continuing care contracts.

Know Your Rights

If you have questions or concerns about the admission process or the admission agreement, discuss them with the admissions coordinator or administrator. Although assisted living facilities are required to comply with the laws discussed in this guide, they do not always do so.

A resident and family members can help make sure that the resident receives quality care by raising concerns at the earliest opportunity. After reading this guide, you may have a better understanding of assisted living laws than the average staff member.

If you see something inconsistent with what you have read here, question it. Explain that
you have a different understanding of what the law requires. Assert your rights.

If you have questions or concerns about the admission process or the admission agreement, discuss them with appropriate facility staff.

Admission Decisions
In general, assisted living facilities can accept or reject any applicant. Applicants who are rejected by a facility may not learn why the facility rejected them. Facilities are not required to give a reason for their rejection decisions. However, facilities cannot reject an applicant based on an unlawful reason.

Unlawful reasons for rejection include discrimination against applicants based on national origin, race, or color. Applicants who believe they have been denied admission based on an unlawful reason should contact a knowledgeable attorney.

Facilities cannot reject an applicant based on an unlawful reason.

Admission Process
Before an individual is admitted to an assisted living facility, an admissions coordinator from the facility must meet with the prospective resident. The admissions coordinator is required to provide sufficient information about the facility, its services, and its costs to enable all persons involved in the resident’s placement to make an informed decision regarding admission. The prospective resident is asked to provide information about his medical history, a recent physician’s report, specific service needs, and functional abilities and limitations.

This collection and evaluation of information will form the basis for the resident’s care plan. The care plan describes what care the facility and staff will provide to the resident and the resident’s preferences regarding his care.

The care plan describes what care the facility and staff will provide to the resident and the resident’s preferences regarding his care.

Within two weeks of a resident’s admission, the resident or family member will 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 care plan meeting may be combined with the initial meeting with the admissions coordinator. A similar care plan meeting must occur at least once every 12 months or whenever there is a significant change in the resident’s condition so that necessary changes can be made to the resident’s care plan. (See Chapter 4, page 40.)

Admission Agreements
Prospective residents who are accepted for admission will need to sign an admission agreement. An admission agreement is a legal document that sets forth the rights and responsibilities of the facility and resident.
No Standard Admission Agreement
California does not require assisted living facilities to use a standard admission agreement. As a result, the specifics of the agreement may vary from facility to facility.

**TIP:** Before making an admission decision, residents considering a particular facility should obtain a copy of the admission agreement and take as much time as needed to review it.

California law requires assisted living facilities to post in a conspicuous place a complete copy of the admission agreement or explain how it may be obtained. The facility also must make blank copies of the agreement available to the public, but may charge for copying and mailing costs.

Residents should ask the facility to explain terms or provisions they do not understand and to delete provisions that seem unfair or illegal. If a proposed admission agreement contains troublesome language or fails to address important issues, residents can ask for changes. Residents should not allow facility staff to pressure them into signing the admission agreement before they are ready to do so.

**TIP:** If an admissions agreement is so complex that you don’t understand it, you might want to have an attorney review it.

The admission agreement and all attachments must be dated and signed by both the facility and the resident or the resident’s legal representative. The facility must provide a copy of the agreement to the resident or his representative. Once the admission agreement is signed, the facility must abide by its terms.

**TIP:** After an admission agreement is signed, the facility is required to give a copy to the resident or resident’s representative.

Contents
The law requires that admission agreements describe the types of services that the facility will offer and their costs. The agreement must also include procedures regarding billing and payment, rate increases, and refunds. Other items that must be in the agreement include:

**ASK THE EXPERTS—CHANGES TO ADMISSION AGREEMENT**

Am I allowed to request changes to the admission agreement that the assisted living facility gave me to sign?

Yes. Although it may seem awkward to request changes to a pre-printed agreement, it is important to make sure that the agreement accurately reflects the responsibilities of the facility and the resident. Awkwardness at admission is better than being stuck with an unfavorable agreement. Asking for changes can resolve situations in advance or demonstrate that a prospective resident might be better off in another facility because of the facility’s unwillingness to accommodate his wishes.
• List of resident rights
• Services offered at the facility through another individual or company, such as manicures or pedicures
• Eviction conditions, notice requirements, and appeal procedures
• Visitor policies
• Termination conditions
• Facility rules and policies
• Right of residents to accept or refuse medical treatment and complete advance healthcare directives, such as the Power of Attorney for Health Care
• Theft and loss policies
• Complaint or grievance procedures

Arbitration Agreements

Some assisted living facilities require residents to sign arbitration agreements as a condition of admission. Arbitration is a dispute resolution process in which an individual, called an arbitrator, decides whether a resident is entitled to compensation. Judges and juries are not involved. If a resident agrees to binding arbitration, the arbitrator’s decision is final and cannot be appealed.

If a resident agrees to binding arbitration, the arbitrator’s decision is final and cannot be appealed.

TIP: This guide recommends that residents do not sign arbitration agreements. Arbitration has advantages and disadvantages, and a decision to arbitrate should be made only after consultation with an attorney. If arbitration is the best option, residents can make that choice after a dispute has arisen. Residents do not need to give up their rights in advance.

Payment Provisions

Some admission agreements adequately describe rates and fees and others do not. California law requires that admission agreements include detailed information regarding payment provisions.

Services and Charges

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. (See Chapter 2, page 22.) It can charge a flat fee for all services, a flat fee for basic services and additional fees for others services, or varying fees based upon a resident’s service needs.

If a facility wishes to set varying rates, those rates must be specified in the admission agreement. For example, an admission agreement might specify rates varying with a resident’s care needs. Generally such agreements set a flat amount for a core package of services and assess extra charges for additional services.

Prospective residents should be wary of admission agreements that fail to explain specific instances in which extra charges are assessed or are otherwise vague. A resident should avoid an admission agreement that gives the facility wide discretion in deciding when a resident’s care needs allow the facility to shift the resident’s cost from one price level to another.

Prospective residents should be wary of admission agreements that fail to explain specific instances in which extra charges are assessed or are otherwise vague.

Keep in mind that admissions agreements cannot deny a resident services required by state law. (See Chapter 4, pages 42–47.) The law merely gives facilities options in the way they charge residents for services. Remember also that rates can vary with the level of services only if the rates were outlined in the admission agreement. If the agreement does not provide for varying rates, the facility cannot assess extra charges for particular services the resident might require.

Rate Increases
California law allows assisted living facilities to increase their rates and exempts them from local rent-control regulations. However, the facilities must provide advance notice of rate increases.

A facility must provide at least 60 days’ written notice in advance of any increase in its fees or rates for services. The notice must include the amount of the increase, the reason...
for the increase, and a general description of additional costs.

A facility cannot increase a resident’s rate due to a change in the resident’s care needs unless the increase is noted in the admission agreement. In that instance, the facility must give the resident or the resident’s responsible person a written notice within two days of initially providing the services needed for the new level of care. The notice must include a detailed explanation of additional services and charges.

A facility cannot increase a resident’s rate due to a change in the resident’s care needs unless the increase is noted in the admission agreement.

If a resident is an SSI recipient, state regulations prohibit the facility from charging more than the basic SSI rate, currently $993 per month. (For current SSI rates, visit Bet Tzedek at www.bettzedek.org/resources.)

Preadmission Fees
State law allows assisted living facilities to collect a preadmission fee to cover costs such as conducting an assessment, obtaining medical records, and setting up files. The facility must provide a written statement to the resident explaining all preadmission fees. A preadmission fee is not allowed if the resident receives SSI.

In addition, 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 if the resident moves out for any reason during the first month (80% refund to the resident)
- 40% if the resident moves out for any reason during the second month (60% refund to the resident)
- 60% if the resident moves out for any reason during the third month (40% refund to the resident)
- 100% if the resident moves out for any reason after the third month (0% refund to the resident)

Damage Fees
Although a facility can require a preadmission fee, it cannot hold residents financially responsible for damage to the facility. California law prohibits assisted living facilities from requiring a security deposit for damages. California also forbids assisted living facilities from charging for cleaning a unit after a resident leaves. Cleaning is considered a basic service and must be provided automatically by every facility.
Admission Agreement Pitfalls

Some admission agreements contain provisions that are not allowed under the law. Be especially alert for agreements that:

- Waive the facility’s responsibility for resident safety or safekeeping of personal property (illegal provision)
- Fail to explain the types of care that the facility can and cannot provide
- Are vague about circumstances that justify a higher price in agreements with varying price levels
- Require a security deposit or cleaning fee
- Require an advance notice of more than 30 days for a resident’s decision to move out
- Refuse to give a refund when the resident leaves before the expiration of paid days

**TIP:** If the admission agreement does not limit refunds, ask for a full refund for unused days.

Continuing Care and Life Care Contracts

Under certain conditions admission agreements may require that an entering resident give most or all of his savings to the facility. A continuing care contract can require

**ASK THE EXPERTS—REFUNDS**

*My husband left his assisted living facility in the middle of the month, but had paid through the end of the month. Are we entitled to a refund?*

Not necessarily. California regulations require that admission agreements list refund conditions, but they do not require a facility to issue a refund unless a resident dies before his paid days have expired.

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.

a person to pay an extra sum of money in exchange for a stay over one year in an assisted living facility.

Likewise, a life care contract, a type of continuing care contract, can require a person to pay most or all of his savings in exchange for residence for the remainder of his life. The facility can offer a life care contract only if it operates an adjacent nursing home. The life care contract must offer the person all necessary levels of care including nursing home care.

Life care contracts are offered by many facilities associated with religious denominations or non-profit organizations.
Regardless, assisted living facilities can only offer continuing care contracts or life care contracts with the approval of the California Department of Social Services. If a continuing care contract is offered, potential residents should ask to see the facility’s approval from the state.

**TIP:** A resident can cancel a continuing care contract for any reason or for no reason at all within 90 days after moving in.

**Cancelling a Continuing Care Contract**
Residents can escape from a continuing care contract if they change their mind after signing it but only if they change their mind soon enough. A resident’s contract can be canceled if written notice is given within 90 days of moving in. After the initial 90-day period, cancellation rights are determined by the language in the contract itself.

During the initial 90-day period, facilities do 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.

Whether a contract is canceled by the resident or 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 from admission to the cancellation date.
A resident can cancel a continuing care contract for any reason—or for no reason at all—within 90 days of moving in.

Continuing Care Contracts: Good and Bad
Continuing care contracts may be right for some individuals but wrong for others. People generally sign a continuing care contract not because the contract terms are desirable, but because they want to gain admission to the facility, especially one operated by a religious denomination or a non-profit organization. Admission to such facilities also brings peace of mind that the person’s long-term care needs can be met in a single setting, relieving the concerns of being a burden on family and friends.

On the plus side, continuing care contracts may lessen the resident’s financial concerns. One large payment can cover virtually all the resident’s expenses. In addition, continuing care contracts may contribute toward worthy causes, such as the resident’s church or favorite nonprofit organization.

On the other hand, continuing care contracts are designed for people with sufficient resources to pay the sizeable entrance fee, often from the sale of their home. It might deprive residents of most of their savings upfront, with no guarantee that the facility will remain solvent.
RESOURCES
For more information on topics in this chapter, consult the following agencies, print and online resources, and the legal citations on which the information is based.

Agencies
• Bet Tzedek Legal Services: www.bettzedek.org, (323) 939-0506
• California Advocates for Nursing Home Reform: www.canhr.org, (800) 474-1116
• California Department of Social Services, Community Care Licensing Division: www.cclld.ca.gov, (916) 657-2592. (For phone numbers of Regional Offices, see Appendix B.)
• California Long-Term Care Ombudsman Program: www.aging.ca.gov/programs (search: “LTCOP”), Crisis Line (800) 231-4024. (For phone numbers of local Ombudsman Programs, see Appendix A.)

Online
• California Advocates for Nursing Home Reform RCFE Fact Sheet, “Admission Agreements”: www.canhr.org/factsheets
• California Advocates for Nursing Home Reform RCFE Fact Sheet, “Outline of Residents’ Rights, Residential Care Facilities for the Elderly”: www.canhr.org/factsheets
• California Advocates for Nursing Home Reform RCFE Fact Sheet, “Refunds”: www.canhr.org/factsheets
• California Department of Social Services, “Guide to Admission Agreements for Residential Care Facility for the Elderly” (Form LIC 604A): www.cclld.ca.gov (search “LIC 604A”)
• California Department of Social Services, Continuing Care Retirement Communities: www.calccrc.ca.gov

Legal Citations
The discussions in this chapter are based primarily on Title 42 of the United States Code, section 3604; California Government Code, section 12955; California Health and Safety Code, sections 1569.147, 1569.154, 1569.651, 1569.655, 1569.657, 1569.80, 1569.880 through 1569.888, and 1770 through 1793.62; Title 22 of the California Code of Regulations, sections 87456, 87457, 87467, and 87507.
CHAPTER 4
QUALITY OF CARE
California law requires assisted living facilities to provide residents with individualized care. The quality of care received by residents depends on a variety of factors. Measurable factors include the number and qualifications of the staff, and the amount of money spent on resident care. Quality of care depends on less tangible factors too, such as staff attitude and the general atmosphere of the facility.

This chapter describes the care planning process. In addition, it discusses specific services and related residents’ rights.

Care Planning Process
Assisted living residents have the right to receive good care. To obtain good care, residents should take an active role in the care planning process. Care planning includes appraising and monitoring a resident’s condition, preparing a care plan, and engaging key participants through periodic care conferences.

To obtain good care, residents should take an active role in the care planning process.

Pre-Admission Appraisal
An assisted living facility is required to conduct an appraisal of a prospective resident prior to admission to determine whether it can meet the resident’s individual service needs. The facility must evaluate and prepare a written appraisal, and keep the appraisal and supporting documents on file.

The appraisal must include information about the resident such as:

- Medical background
- Mental condition
- Likes and dislikes, interests, and activities
- Ability to carry out routine daily tasks

The facility may charge a fee to perform the appraisal, but only if it discloses the fee and refund conditions in the admission agreement.
Care Plan Meeting

Prior to or within two weeks of a resident’s admission, the facility must arrange a meeting with the resident, the resident’s representative, appropriate facility staff, and a representative of any home health agency involved in the resident’s care. During the meeting, the 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. If the resident has a regular physician, the facility must send the care plan to that physician.

For instance, if a resident prefers to eat breakfast in bed and take baths in the evening, her care plan should note her preferences and state that she will receive tray service in her room in the morning and three baths a week following dinner.

The facility must arrange for additional care plan meetings whenever there has been a significant change in the resident’s condition or at least once every 12 months to ensure that the written care plan is kept up-to-date.

TIP: An individualized care plan can be an invaluable tool to improve a resident’s care and quality of life. Do not let the facility turn care planning into a meaningless process. Insist that the care plan reflect the unique needs and preferences of the resident and that the facility provide the care specified in the plan. Ask for a copy of the care plan and review it thoroughly. If the care plan is not working, request a meeting to review and update the plan.

Specific Services and Residents’ Rights

In general, an assisted living facility must enable its residents to lead lives as active and
satisfying as possible. A facility must provide services that “continue and promote, to the extent possible, independence and self-direction for all persons accepted for care.” Care standards, services, and related residents’ rights are set forth in California law and cover everything from activities of daily living to hospice care to visiting hours.

**A facility must provide services that “continue and promote, to the extent possible, independence and self-direction for all persons accepted for care.”**

**Activities of Daily Living**
Assisted living facilities must give their residents necessary assistance in activities of daily living. This assistance must be based on the resident’s appraisal and care plan. Here is a list of common activities of daily living:

- Bathing
- Dressing
- Eating
- Grooming
- Toileting
- Transferring in and out of bed, chair, or wheelchair
- Walking

**Activity Program**
Assisted living facilities must provide activities to make each resident’s life as complete as possible. Activities must promote socialization among residents and give residents contact with events outside the facility. A facility also must provide special activity programs that address the needs and limitations of residents with dementia.

**TO LEARN MORE**
For more information about residents’ rights, see the California Advocates for Nursing Home Reform RCFE Fact Sheet, “Outline of Residents’ Rights, Residential Care Facilities for the Elderly” at www.canhr.org/factsheets, and the California Department of Social Services, Community Care Licensing Division form, “Personal Rights, Residential Care Facilities for the Elderly” at www.ccll.ca.gov (search: “LIC 613C”).

**BASIC SERVICES**
All assisted living facilities must provide the following basic services:

- Care, supervision, and observation
- Safe and healthful living accommodations
- Three meals daily and snacks
- Assistance with activities of daily living, such as dressing, bathing, and toileting
- Social and recreational activities
- Assistance with obtaining, and transportation to and from, medical and dental care
Assisted living facilities must provide activities to make each resident’s life as complete as possible.

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

Ambulation
An individual who cannot turn in bed, get in and out of bed, or walk without assistance can live in an assisted living facility if the facility meets certain requirements. The requirements are designed to allow residents with limited mobility to live in an assisted living facility instead of being forced to move into a nursing home. The requirements also help ensure the health and safety of residents.

The requirements include:

- Notifying the California Department of Social Services (CDSS) and obtaining fire clearances
- Notifying the local fire authority
- Staff training

The requirements also address certain other safety measures. For example, a resident who cannot walk without assistance must live in a nonambulatory room. A nonambulatory room is one typically located on the first floor near an exit, so the resident can be moved easily out of the facility in case of fire or another emergency.

Bedrooms and Bathrooms
Bedrooms must be large enough to allow for easy passage between and comfortable use of beds, furniture, and assistive devices such as wheelchairs and walkers. No more than two residents are allowed to sleep in one bedroom. Single rooms may be available but residents generally must pay a higher monthly rate.

Bathrooms must be conveniently located, and individual privacy must be provided in all toilet, bath, and shower areas. Facilities must provide at least one toilet and sink for every six residents. A facility also must provide at least one bathtub or shower for every ten residents.

Bowel and Bladder Control
Assisted living facilities 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 started. Residents must be assisted to the bathroom when necessary. Facility staff may never use adult briefs or urinary catheters for their own convenience instead of providing toileting assistance to residents.

Assisted living facilities must ensure that incontinent residents are kept clean and dry.
Dementia Care

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.

Assisted living facilities must provide an adequate number of staff to support the physical, social, emotional, safety, and healthcare 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 must describe its special dementia-related features in its plan of operation. The admission agreement must inform the resident or her legal representative that the special features are described in the plan of operation and that the plan of operation is available on request. The facility also must ensure that special training requirements are met by staff who provide care to residents with dementia.

**TIP:** Do not 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.

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Food

Assisted living facilities must offer residents at least three meals each day. Dinner during the evening and breakfast the following morning cannot be separated by more than 15 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 the resident’s cultural and religious backgrounds and food habits.

If necessary, a facility must offer meals that meet a resident’s doctor-prescribed guidelines. The facility must chop or grind food for residents who have difficulty swallowing. The facility is also required to provide between-meal snacks to residents unless snacks are prohibited or limited by dietary restrictions prescribed by the resident’s doctor.

**Meals must be planned with consideration for the resident’s cultural and religious backgrounds and food habits.**

**Hospice**

People who have been diagnosed as terminally ill by their physician may live in an assisted living facility, but only if certain conditions are met.

- The facility must obtain approval from the California Department of Social Services to care for terminally ill residents.
- The resident must contract for hospice services to be provided 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.
- Roommates of the resident must agree to allow hospice caregivers into the room.

**TO LEARN MORE**

“Medicare Hospice Benefits,” an informative guide about hospice care published by Medicare, is available online at www.medicare.gov (search “medicare hospice benefits”) or by calling 1-800-MEDICARE (633-4227).

**Medical Care**

California law allows assisted living facilities to admit and retain residents who have significant healthcare needs. In general, such a resident can reside in an assisted living facility if (1) the resident is capable of caring for the condition herself or (2) the resident receives necessary healthcare services from an appropriately skilled professional (ASP).

In most instances, that means 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 medical care on behalf of a resident as long as there is an adequate agreement between the agency and the facility, and the facility is capable of providing supportive care and supervision.
MEDICAL SERVICES PROVIDED IN ASSISTED LIVING FACILITIES USING APPROPRIATELY SKILLED PROFESSIONALS (ASP)s

- Oxygen therapy or a breathing machine
- Colostomy, ileostomy, or catheter care
- Diabetes care
- Injections
- Care for pressure ulcers (stages 1 or 2, only)

NOTE: An ASP must be qualified for the service being provided and appropriately supervised.

TIP: Current California laws may provide inadequate protection to residents with healthcare needs. The regulations contain few specific requirements for the provision of medical care. Residents who require significant medical services might be admitted to substandard facilities with little or no oversight of their medical care by the state.

Medications

Since assisted living facilities are not licensed to provide health care, California law requires that residents be capable of administering their own medications. Facility staff may assist a resident in self-administering medication, and must securely store medication for residents under certain circumstances. For instance, the facility must store a resident’s medication if it requires refrigeration and the resident does not have her own refrigerator. Facility staff who assist residents in the self-administration of medications must complete specified training requirements.

TIP: Misuse of medication is a common problem in assisted living facilities. It is illegal for a facility to use psychoactive or antipsychotic medications as a substitute for personal care. Using medications this way is referred to as the use of chemical restraints and may

ASK THE EXPERTS—SELF-ADMINISTRATION OF MEDICATIONS

My husband needs to take heart medication twice a day, but he is very forgetful. Is it safe for the facility to give him medication even though it does not have medical staff?

Although the law requires residents of assisted living facilities to self-administer medication, many are not mentally competent to do so. In practice, virtually all facilities store and administer medications. While the medication administered at assisted living facilities generally is less powerful than that administered by nursing homes, it can be dangerous for a resident to get strong medication from an employee with little or no training.
constitute elder abuse. (See Chapter 8, page 85.)

**Mental Health Care**
Assisted living facilities can admit people with mental or emotional limitations, 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 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.

**Resident Records**
Assisted living facilities must ensure that a complete and current record is maintained for each resident. All information and records regarding residents must be kept confidential. A facility may reveal confidential information only if it first obtains the written consent of the resident or her legal representative.

**Telephones**
California law requires that an assisted living facility must provide a telephone on premises for residents to make and receive confidential calls. A facility may satisfy its requirements with a pay telephone as long as the facility gives residents change to pay for local calls. The facility may require reimbursement for long-distance calls, but only if such reimbursement is provided for in the admission agreement.

**Temperatures**
Facilities must maintain a comfortable temperature for residents at all times. Resident rooms must be heated to at least 68 degrees. The rooms must be cooled to a “comfortable range” between 78 and 85 degrees. A resident may adjust an individual thermostat in her room to her own preference.

**Visitors**
In general, residents can meet visitors in an assisted living facility during reasonable hours of the day. The facility must ensure that residents and visitors are able to meet privately, if desired.
RESOURCES
For more information on topics in this chapter, consult the following agencies, print and online resources, and the legal citations on which the information is based.

Agencies
• Bet Tzedek Legal Services: www.bettzedek.org, (323) 939-0506
• California Advocates for Nursing Home Reform: www.canhr.org, (800) 474-1116
• California Department of Social Services, Community Care Licensing Division: www.cclld.ca.gov, (916) 657-2592. (For phone numbers of Regional Offices, see Appendix B.)
• California Long-Term Care Ombudsman Program: www.aging.ca.gov/programs (search: “LTCOP”), Crisis Line (800) 231-4024. (For phone numbers of local Ombudsman Programs, see Appendix A.)

Online
• California Advocates for Nursing Home Reform RCFE Fact Sheet, “Assessment and Care Planning”: www.canhr.org/factsheets
• California Advocates for Nursing Home Reform RCFE Fact Sheet, “Outline of Residents’ Rights, Residential Care Facilities for the Elderly”: www.canhr.org/factsheets
• California Department of Social Services, Community Care Licensing Division, “Personal Rights, Residential Care Facilities for the Elderly”: www.cclld.ca.gov (search: “LIC 613C”)

Legal Citations
The discussions in this chapter are based primarily on the California Health and Safety Code, sections 1569.312, 1569.651, 1569.698, 1569.699, 1569.72, 1569.725, 1569.73, 1569.80, 13131, and 13131.5; California Welfare and Institutions Code, section 15630; and Title 22 of the California Code of Regulations, sections 87101, 87202, 87219, 87303, 87307, 87311, 87455-87468, 87505, 87506, 87555, 87606, and 87609-87633, and 87705-87707; California Department of Social Services’ Evaluator Manual, Regulation Interpretations and Procedures” for Residential Care Facilities for the Elderly sections 87633 and 87705 (www.cclld.ca.gov/res/pdf/RCFE.pdf).
Assisted living facilities are home for thousands of Californians, and the law is very protective of the right of residents to remain in their homes. This chapter discusses the limited circumstances under which a facility can legally evict a resident. It includes information about lawful and unlawful reasons for evictions, notice requirements, challenging evictions, state relocation orders, and facility closures.

**Lawful and Unlawful Reasons**

Assisted living residents, like tenants in an apartment building, generally have the right to remain where they are living even if the facility would prefer for them to move out. Legally, residents can only be evicted for limited reasons, though some facilities attempt to discharge them for improper or illegal reasons.

**Lawful Reasons**

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

1. The resident fails to pay for services within ten days of the due date.
2. The resident fails to comply with state or local law after receiving written notice of an alleged violation.
3. The resident fails to comply with general facility policies set forth in the admission agreement. Those policies “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 facility can no longer meet those needs.
5. The facility is no longer licensed to operate as an assisted living facility.

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

A resident may also be evicted if the resident is “engaging in behavior which is a threat to the mental or physical health or safety” of herself or other residents.

**Unlawful Reasons**

Some facilities attempt to evict residents for unlawful reasons. An unlawful reason is any reason other than the five legal reasons discussed above. If the facility is attempting to evict a resident for an unlawful reason, the resident should challenge the eviction.

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**ASK THE EXPERTS—UNLAWFUL EVICTIONS**

My facility was recently sold and the new owner wants me to sign a new admission agreement. I refused to sign it, and now they’re trying to evict me. Is that legal?

No. New owners often ask residents to sign new admission agreements with unfavorable terms. If the new admission agreement is not favorable to you, do not sign it. The new owner may not evict you for refusing to sign the agreement. It is not one of the five lawful reasons for eviction.
Examples of unlawful reasons for eviction include:

- Resident refuses medical treatment
- Caring for resident has become too burdensome or expensive
- Resident filed a complaint against the facility
- Resident and family have unreasonable expectations
- Resident would be better off in another assisted living facility

**Protections for Supplemental Security Income (SSI) Recipients**

If a resident spends all of his savings and converts from private pay to Supplemental Security Income (SSI), he is only required to pay the SSI monthly rate ($993 in 2013). California regulations state that “if the resident is an SSI recipient, then the basic services shall be provided or made available at the basic rate at no additional charge to the resident.”

A facility cannot evict an SSI-recipient for nonpayment for paying the SSI monthly rate, even if the resident agreed during admission to pay a higher rate, because it may not charge an SSI-recipient more than the SSI rate. (For more information regarding SSI, see Chapter 2, Paying for Care, pages 18–21. You can also check the Bet Tzedek website for current rates: www.bettzedek.org.)

**Protections for Residents with Increased Care Needs**

California law states that a facility may evict a resident whose needs have changed if the facility can no longer meet the resident’s needs. However, state law may be overridden in some situations by the federal Americans with Disabilities Act (ADA), which prohibits assisted living facilities or other service providers from discriminating based on medical condition.

Based on the ADA, a resident can argue that a facility should be required to provide extra care rather than claiming it cannot meet the resident’s needs. In other words, a facility may not refuse to provide difficult or expensive care as long as the requested care can legally be provided at that facility.

If a resident believes that a facility can care for him but simply does not want to, he should challenge the eviction by arguing that the facility is discriminating against him in violation of the federal anti-discrimination laws. A resident can also file a disability discrimination complaint with the Department of Justice Office of Civil Rights or the California Department of Fair Employment and Housing.
**Notice Requirements**

Assisted living facilities must give residents written notice at least 30 days in advance of filing a court action to evict them. If the resident has lived in the facility for more than a year, the facility must give 60-days’ advance written notice.

_Ask the Experts—Rights of Residents with Medical Conditions_

My husband’s diabetes has gotten worse, and he now has to give himself daily insulin injections. His assisted living facility is trying to evict him because it says his care needs have increased. Is this legal?

Probably not. An assisted living facility can admit and retain a resident with diabetes if the resident is able to perform his own glucose testing and administer his own medications (or has it administered by an appropriately skilled professional). Assisted-living lobbying groups regularly cite federal anti-discrimination laws to push for the right to care for residents with significant medical conditions. However, they also generally fight against state laws that obligate them to provide care for those same residents. The right to care for disabled persons brings with it legal 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.

Three-Day Notice of Eviction

In rare instances, a facility may give a resident a three-day written notice of eviction. Such a notice may be given only if the resident’s continued stay at the facility endangers the health or safety of the resident or other residents and if the facility has first obtained written approval from the California Department of Social Services.

An eviction notice must list at least one of the five legally justified reasons for eviction discussed above, along with specific facts to allow the resident to determine the date, place, and witnesses of the incidents the facility believes justify eviction.

The eviction notice must also list:

- Effective date of the eviction
- Resources for alternative housing and care options
- Information about the resident’s right to file a complaint with the California department of social services (CDSS) regarding the eviction
- Contact information for the CDSS and the long-term care ombudsman
- The following statement, word for word: “in order to evict a resident who remains in the facility after the effective date of the eviction, the residential care facility for the elderly must file an unlawful detainer action in superior court and receive a written judgment signed by a judge. If the facility pursues the unlawful detainer action, you must be served with
a summons and complaint. You have the right to contest the eviction in writing and through a hearing.”

Challenging an Eviction
A resident may challenge an eviction two ways: Filing a complaint with the California Department of Social Services (CDSS) or by challenging the eviction in court.

File a Complaint with the CDSS
The CDSS can require the facility to withdraw an eviction notice if the notice does not comply with state law. The CDSS can determine that the facility does not have a legal basis for proceeding with the eviction. The CDSS also has the power to fine the facility for violating laws regarding eviction grounds and procedures.

Challenging the Eviction in Court
A resident also may challenge an eviction by not moving out and requiring a facility to go to court to prove its case. If a resident is told by the facility that he must leave, he should file a complaint with CDSS and defend the eviction in court.

TIP: Residents who need assistance in filing complaints with the CDSS should contact their local Ombudsman office. (For phone numbers of local Ombudsman Programs, see Appendix A.)

5 REASONS FOR EVICTION
1. Failure to pay for services within 10 days of due date
2. Failure to comply with laws after written notice of violation
3. Failure to comply with facility policies
4. Facility cannot meet changed care needs
5. Facility’s loss of license

If the resident believes that none of the five reasons for eviction apply, he can refuse to move. The facility then will be forced to either abandon the eviction or prove one of the five reasons in court.

TIP: Many attempted eviction actions are improper. If a resident refuses to leave, facilities often abandon the eviction because the process of filing a court action is expensive and time-
consuming. In addition, many residents win when they challenge evictions in court.

If a facility chooses to go to court, the resident will receive a summons and what is called an *unlawful detainer* complaint. Once the resident receives the summons and complaint, he must file a response with the court within five days. The resident should send a copy of his response to the facility at the same time.

**Once a resident receives a summons and unlawful detainer complaint, he must file a response with the court within five days.**

When the court has received the complaint and the resident’s response, the court will notify the resident and facility of a date and time for trial. At the trial, a judge will decide whether the resident can be evicted.

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

**Relocation Orders by the California Department of Social Services**

The California Department of Social Services (CDSS) may order an assisted living facility to relocate a resident if the state believes that the resident has a health condition for which the facility cannot provide appropriate care. The state may also order immediate relocation if it believes that the resident’s health condition endangers his safety.

If the state believes that the resident’s health condition is *not* an immediate danger, the state must give written notice of the proposed relocation and the right to appeal the relocation to the facility, resident, and resident’s representative.

**Challenging a Relocation Decision**

If the state did not order immediate relocation, a resident or resident’s representative may submit a written appeal of the relocation order. The written appeal must be submitted to the facility within three working days after the resident or resident’s representative receives the order. The facility then must forward the appeal to the state. The CDSS must complete its review and make a determination within 30 days after the first notice to the resident.

Additionally, the resident may decline to obey the relocation order, even an order requiring immediate relocation. The state could penalize the resident’s facility but it has no direct authority over the resident.

**Facility Closures**

In general, when an assisted living facility closes for business reasons or loses its license to operate, it is required to take all reasonable steps to transfer residents safely and to minimize transfer trauma. These steps include 60-day advance written notification, relocation planning and assistance, and refunds of certain monthly and preadmission fees. If a facility violates a resident’s closure rights, the resident may bring a lawsuit and recover money damages, court costs, and attorney fees.
The state may also order immediate relocation if it believes that the resident’s health condition endangers her safety.

**ASK THE EXPERTS—READMISSION AFTER HOSPITAL STAYS**

I’m a resident at an assisted living facility, and I’ll be having knee replacement surgery next month. If I need a little additional care after my hospital stay, can I still return to my facility?

An assisted living facility may not refuse to readmit a resident after a hospital stay unless the resident requires 24-hour skilled nursing care and has been evicted through appropriate legal proceedings.

If a facility believes that a resident needs a higher level of care and that it cannot meet the resident’s needs, it must conduct a formal reappraisal and comply with all requirements related to the eviction process. That includes serving the resident with an eviction notice, filing an unlawful detainer action, and obtaining a written order signed by a judge. If the resident’s health improves during the eviction notice period and he no longer needs a higher level of care, the facility must withdraw the eviction notice and allow the resident to return to the facility.

**ASK THE EXPERTS—SHOULD I CHALLENGE A RELOCATION ORDER?**

The assisted living facility just told me that it received an order from the California Department of Social Services to relocate my wife. I know she is sicker now than when she was admitted to the facility, but it is her home. Should I appeal the order?

You should challenge the relocation order only if you believe that the order is a mistake. Your wife will not benefit from staying at the facility if it cannot properly care for her health problems.

**TO LEARN MORE**

The California Advocates for Nursing Home Reform (CANHR) and Bet Tzedek co-sponsored legislation establishing relocation rights and protections for residents involved in facility closures. For more information, see CANHR’s fact sheet entitled “RCFE Closures: Residents’ Rights and Protections” at www.canhr.org/factsheets.
RESOURCES
For more information on topics in this chapter, consult the following agencies, print and online resources, and the legal citations on which the information is based.

Agencies
• Bet Tzedek Legal Services: www.bettzedek.org, (323) 939-0506
• California Advocates for Nursing Home Reform: www.canhr.org, (800) 474-1116
• California Department of Fair Employment and Housing: www.dfeh.ca.gov
• California Department of Social Services, Community Care Licensing Division: www.cclld.ca.gov, (916) 657-2592. (For phone numbers of Regional Offices, see Appendix B.)
• California Long-Term Care Ombudsman Program: www.aging.ca.gov/programs (search: “LTCOP”), Crisis Line (800) 231-4024. (For phone numbers of local Ombudsman Programs, see Appendix A.)
• Department of Justice Office of Civil Rights: www.justice.gov, (202) 514-4609

Online
• California Advocates for Nursing Home Reform RCFE Fact Sheet, “Eviction Protections”: www.canhr.org/factsheets
• California Advocates for Nursing Home Reform RCFE Fact Sheet, “RCFE Closures: Residents’ Rights and Protections”: www.canhr.org/factsheets
• California Department of Social Services’ Evaluator Manual (Section 87224): www.cclld.ca.gov/res/pdf/RCFE.pdf

Legal Citations
The discussions in this chapter are based primarily on the Americans with Disabilities Act, Titles II and III, 42 United States Code, sections 12131-12134, 12181-12183, and 12186-12188; 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, sections 1940 and 1946.1; the California Health and Safety Code, sections 1569.54, 1569.682, and 1569.683; Title 22 of the California Code of Regulations, sections 87224, 87464, 87612, and 87637-87639; CDSS Evaluator Manual section 87224 (www.cclld.ca.gov/res/pdf/RCFE.pdf); and Klarfeld v. Berg, 29 Cal. 3d 893, 176 Cal. Rptr. 539 (1981).
CHAPTER 6
PROTECTING RESIDENTS’ PROPERTY
Residents of assisted living facilities may not have the physical or mental strength to protect their own property. As a result, theft and loss of residents’ money and belongings is a common problem in facilities. Assisted living facilities must have policies and programs to reduce theft and loss.

This chapter discusses what a facility must do to protect residents’ property, liability for missing property, and actions to hold facilities responsible for stolen or lost property.

**Theft and Loss Prevention**
A facility is required to make reasonable efforts to protect residents’ property. If it does not do so, it must replace or pay for the stolen or lost property. California law prohibits an assisted living facility’s admission agreement from reducing the facility’s responsibility for protecting residents’ property.

_A facility is required to make reasonable efforts to protect residents’ property._

A facility must post a copy of its theft and loss policy and investigative procedures. It must notify new and current residents of its theft and loss policy and procedures. It must provide a copy of California laws regarding theft and loss programs to all residents and their responsible parties.

**Residents’ Property**
An assisted living facility must prepare a written inventory of a new resident’s personal belongings. The facility must provide a copy of the inventory to the resident. When a resident brings a new item into the facility, he should request in writing that the facility add it to the inventory. The facility must provide a copy of the current inventory to the resident or his authorized representative whenever it is requested.

**TIP:** A resident should make sure that the facility prepares a written inventory of all his belongings, and check it every three months to make sure that it is accurate. A resident also should keep a copy of the current inventory. A facility is more likely to be held accountable for missing property if it is listed on the resident’s inventory.

A facility must also mark or tag a resident’s items so that they can be easily identified. A resident should make sure that the facility marks or tags all of his belongings. In particular, the resident should make sure that the facility marks items that are easily lost such as glasses, hearing aids, and dentures.

_The facility must provide a copy of the current inventory to the resident or his authorized representative whenever it is requested._

The facility must provide a safe place for residents’ belongings. If requested by a resident, the facility must provide a lock for a resident’s drawer or cabinet. The facility may require the resident to pay for the lock.
The best place for a resident to store her valuables is outside of the facility in a safe deposit box or with a trusted family member.

Residents’ Funds
Assisted living facilities cannot require residents to deposit personal funds with the facility. However, if a facility accepts a resident unable to manage his money, it must hold, protect, and account for the resident’s funds.

If an assisted living facility agrees to hold a resident’s personal funds, the facility must keep the resident’s funds separate from the facility’s funds. The resident’s funds may be kept in a bank account or in a “locked and secure location” at the facility. The facility must maintain adequate protections and records, and give the resident receipts for all transactions involving the funds.

If a facility accepts a resident unable to manage his money, it must hold, protect, and account for the resident’s funds.

**ASK THE EXPERTS—VALUABLE ITEMS**

I have a diamond necklace that I like to wear on special occasions, and my daughter says that I should not keep it at the facility where I live. Is she right?

A resident should avoid as much as possible keeping valuable or irreplaceable items at a facility. If you need to keep a valuable item at the facility, make sure that it is marked and listed on your inventory, and keep it in a locked drawer.

**ASK THE EXPERTS—JOINT BANK ACCOUNTS**

My mother would like her assisted living facility to handle her social security checks. Can she open a joint bank account with the facility or have it receive her checks directly?

Neither owners nor employees of the facility may hold a joint bank account with a resident, nor become the resident’s conservator. The only exception is if the joint account has been agreed to by the resident in a continuing care contract. (Conservatorships are discussed on pages 69–70 of this guide; continuing care contracts are discussed on pages 34–36.)

Restrictions against a facility becoming a substitute payee do not apply to a person appointed to receive checks from the Social Security Administration on a resident’s behalf. That person is known as a representative payee. A facility may act as a representative payee for a resident. The Social Security Administration is charged with monitoring representative payees to prevent abuses.
When a resident moves out, the facility must give the resident all personal funds he entrusted to the facility. If the resident dies, the facility must give the resident’s funds to the administrator of the resident’s estate or other responsible person.

Reporting Theft or Loss
A resident who discovers that his property is missing should report the loss to the administrator or staff immediately. An assisted living facility must document all stolen or lost items worth $25 or more within 72 hours after discovery of the loss.

The records must include the property’s description and value, the date and time the theft or loss was discovered or occurred (if known), and any action taken by the facility. If the property is worth $100 or more, the facility must report the loss to local law enforcement authorities within 36 hours.

Replacement or Reimbursement of Missing Property
An assisted living facility must take reasonable efforts to protect a resident’s property. If it fails to do so, it must reimburse or replace the property at its current value.

An assisted living facility must take reasonable efforts to protect a resident’s property.

Residents who have lost property should report the loss immediately. If the facility is unable to locate the property, the resident should check to see whether the item is included in his inventory and whether he has receipts or other documents that show the item’s value.

If the item is included in the inventory and the resident has a receipt for it, it should be easier to obtain reimbursement from the facility. Even if the resident does not have documents demonstrating the property’s value, he should still report the loss and request reimbursement.

TIP: Do not keep valuable or irreplaceable items at the facility unless they are in a locked drawer.

To request reimbursement of a missing item,
the resident should prepare a written letter to the facility describing:

- Item that was stolen or lost
- Value of the item, with any receipts or other documents evidencing its value
- Date on which the resident informed the facility that the item was missing
- The facility’s failure to take reasonable steps to protect the property, such as its failure to prepare an inventory or mark the property

Various documents may be helpful in demonstrating that a facility failed to take reasonable steps to protect the residents’ property. Examples include the resident’s admission agreement, resident’s inventory, the facility’s theft and loss policies and procedures, and the facility’s records documenting the missing property and actions it has taken.

**TIP:** Although a written request for reimbursement is recommended, a verbal request is sufficient and generally more typical.

If the facility fails to take timely action or refuses to replace the item or pay its current value, the resident should consider involving the Ombudsman Program, filing a complaint with the California Department of Social Services, or filing an action in small claims court. (For more information, see Chapter 8, Resolving Problems at pages 82–84.)
RESOURCES

For more information on topics in this chapter, consult the following agencies, print and online resources, and the legal citations on which the information is based.

Agencies

• Bet Tzedek Legal Services: www.bettzedek.org, (323) 939-0506

• California Advocates for Nursing Home Reform: www.canhr.org, (800) 474-1116

• California Department of Social Services, Community Care Licensing Division: www.ccld.ca.gov, (916) 657-2592. (For phone numbers of Regional Offices, see Appendix B.)

• California Long-Term Care Ombudsman Program: www.aging.ca.gov/programs (search: “LTCOP”), Crisis Line (800) 231-4024. (For phone numbers of local Ombudsman Programs, see Appendix A.)

Print

• California Advocates for Nursing Home Reform, “A Small Claims Guide for RCFE Residents,” with CD-ROM, ©2009. (For a copy, contact CANHR at (800) 474-1116 or visit the Consumer Publications section of its website at www.canhr.org/publications.)

Online

• California Advocates for Nursing Home Reform RCFE Fact Sheet, “Theft and Loss”: www.canhr.org/factsheets

Legal Citations

The discussions in this chapter are based primarily on based primarily on Title 20 of the Code of Federal Regulations, section 404.2021 and 416.621; California Health and Safety Code, sections 1569.152-1569.154; California Civil Code, section 1668; Title 22 of the California Code of Regulations, sections 87216-87218.
MAKING HEALTHCARE DECISIONS

All adults, including residents of assisted living facilities, have the right to make decisions about their own healthcare. Problems may arise, however, if a resident becomes suddenly incapacitated, or unable to communicate due to a stroke, disease, accident, or other event. Because no one knows when or if they will become incapacitated, planning ahead is the best way to make sure that a resident’s preferences regarding future medical care are known and followed.

This chapter examines healthcare decision-making, including planning documents, appointing other decision-makers, and end-of-life treatment.

Directing Future Healthcare
All adults should consider appointing another person to make healthcare decisions for them should they become incapacitated. Facility residents who are incapacitated and have no legal representative might not receive needed medical treatment consistent with their desires. They also might not be able to refuse unwanted medical treatment (such as feeding tubes or chemotherapy) designed to prolong their lives even if they have a poor quality of life and no realistic prospect of recovery.

On the other hand, residents who have appointed another person to make future healthcare decisions for them can make sure that their wishes are carried out. The healthcare appointee can make those decisions in a way most consistent with the resident’s expressed desires.

TIP: Everyone, whether or not in a healthcare facility, should select a healthcare agent and complete an Advance Health Care Directive. Adults of all ages and health status can benefit by appointing a family member or friend to make future healthcare decisions should they become incapacitated.

Key Documents
In California, there are four legal documents people can use to express their wishes about future medical care.

Power of Attorney for Healthcare. This document allows a person to appoint another person to act as his agent. The agent makes healthcare decisions if the person becomes incapacitated.

Individual Healthcare Instruction. This document allows individuals to list specific instructions for future healthcare, including whether they want to donate organs or, if needed, have a feeding tube or breathing machine.

Do Not Resuscitate form. This document allows an individual to specify that he does not wish to receive emergency resuscitative measures such as cardiopulmonary resuscitation (CPR).

Physician Orders for Life-Sustaining Treatment (POLST) form. This document, or POLST, converts a seriously ill person’s wishes regarding end-of-life treatment into a physician’s order.
TIP: The Power of Attorney for Healthcare and the Individual Healthcare Instruction documents are often combined into a single form called an *Advance Health Care Directive* (AHCD). This guide will use AHCD to refer to the Power of Attorney for Healthcare and the Individual Healthcare Instruction documents.

**Advance Health Care Directives**

In California, residents of assisted living facilities can appoint another person (the “agent”) to make healthcare decisions for the resident by completing an *Advance Health Care Directive* (AHCD). The AHCD is a legally binding document that allows the agent to make healthcare decisions for the resident if the resident becomes unable to make or communicate such decisions.

The AHCD allows a physician, hospital, or assisted living facility to receive clear instructions about the resident’s wishes, even though the resident can no longer provide those instructions.

*Always select one or two alternate agents in case your primary agent is unable or unwilling to act on your behalf.*

**Giving Specific Healthcare Instructions to the Agent**

A resident can provide specific instructions to an agent appointed through an AHCD, in writing and orally. Most AHCD forms include an optional section for residents to declare their desire to receive or not receive life-sustaining treatment and under what conditions. Those sections also often provide space for residents to list specific instructions relating to healthcare decisions that they wish to express, such as whether they want to donate organs or to be given a feeding tube or breathing machine.

**TIP**: Residents should discuss personal desires and beliefs with their healthcare agent and their physician.

**TO LEARN MORE**

For additional information, see the California Department of Social Services (CDSS) brochure entitled “Your Right To Make Decisions About Medical Treatment.” This CDSS brochure is available at www.cclrd.ca.gov (search “PUB 325”).
In addition to written instructions, residents should discuss their wishes with their agents. Discussing healthcare decisions now, while the resident is able to explain his preferences, can give the agent a greater sense of comfort about making difficult decisions that may one day prove necessary.

**Written Healthcare Instructions**
An AHCD enables a resident to state his preferences regarding future healthcare even if the resident has no agent specified. The instructions must be honored by healthcare providers if the person can no longer make or communicate his own healthcare decisions.

To provide adequate direction to healthcare providers, a resident should list his instructions as specifically as possible. If an agent is appointed, those instructions also can provide additional guidance to the agent.

**An AHCD enables a resident to state his preferences regarding future healthcare even if the resident has no agent specified.**

**Examples of Healthcare Decisions**
An AHCD allows an agent to make all healthcare and treatment decisions for an incapacitated resident, subject to the resident’s instructions in the AHCD. Typically the agent can make any of these decisions:

- Consent or refuse to consent to any care, treatment, service, or procedure, including diagnostic tests, medications, and surgery
- Select or discharge healthcare providers
- Decide whether to provide, withhold, or withdraw life-sustaining procedures
- Authorize an autopsy
- Direct disposition of remains such as burial, cremation, or anatomical gifts

**TO LEARN MORE**
*Your Way*, a helpful guide to discussing and choosing future healthcare, is available from the Healthcare and Elder Law Programs Corporation (H.E.L.P.) in Torrance, California. For a copy, call (310) 533-1996 or visit www.help4srs.org/publications/yourway.
An agent may not consent to the commitment or placement of a resident in a mental health treatment facility or to convulsive treatment or psychosurgery. An agent also may not make any decision that goes against the resident’s wishes.

Healthcare agents can decide whether to provide, withhold, or withdraw life-sustaining procedures for incapacitated residents.

Comparison: Power of Attorney for Healthcare versus Individual Healthcare Instruction

An AHCD generally consists of a Power of Attorney for Healthcare document and an Individual Healthcare Instruction. However, the Power of Attorney for Healthcare and the Individual Healthcare Instruction serve different purposes and, if possible, residents should complete both.

In general, a Power of Attorney for Healthcare allows a resident to appoint an individual to act on the resident’s behalf in making healthcare decisions when the resident is unable to do so. An Individual Healthcare Instruction allows the resident to specify preferences about future healthcare for his agent and healthcare providers.

When possible, residents should use a Power of Attorney for Healthcare to appoint an agent, because the agent can make decisions based on the particular circumstances. By contrast, it is extremely difficult for a resident to give meaningful instructions for every healthcare decision that may arise in the future.

An Individual Healthcare Instruction can provide guidance to a resident’s agent and healthcare providers. It is most useful, however, for residents who do not have a family member or friend able or willing to act as agent. Under those circumstances, an Individual Healthcare Instruction enables a resident without an agent to communicate his preferences regarding future medical care to medical providers.

AHCD Requirements

To be valid, an AHCD can be completed only by a competent person age 18 or older; contain the person’s name, signature, and date of signature; and be notarized or witnessed by two qualified adults.
Neither the agent, the resident’s physician, nor an owner or employee of the assisted living facility may serve as a witness. At least one of the two witnesses must be someone who is not related to the resident nor entitled to any of the resident’s property after the resident’s death.

**Neither the agent, the resident’s physician, nor an owner or employee of the assisted living facility may serve as a witness.**

### Changing an AHCD

If properly completed, an AHCD remains effective indefinitely. If a resident is of sound mind, he can change or revoke an AHCD anytime. A new AHCD, properly completed, will automatically revoke the old form.

A resident should make changes or revocations to his AHCD in writing. The resident should notify the former and new healthcare agents (if applicable), complete a new AHCD, and provide copies of the new directive to the new agent, family members, assisted living facility, physicians, and hospitals. Under California law, a copy is just as valid as an original.

### AHCD Notification and Registration

A resident who has completed an AHCD should prepare a card that lists the telephone numbers of the agent and alternate agents, and keep the card in the resident’s wallet or purse. If desired, the resident can register the AHCD with the California Secretary of State by calling (916) 653-3984 or visiting www.sos.ca.gov/ahcdr.
**TIP:** A resident should make several copies of his AHCD and distribute it to his healthcare agent, family, friends, HMOs, physicians, assisted living facility, hospitals, and other healthcare personnel and facilities where the resident receives medical care.

**Conservatorships**

When a difficult healthcare decision needs to be made for an incapacitated resident who never appointed an agent, or when family members and friends of such a resident disagree on the proper medical treatment, a family member or friend should seek formal, documented authority to make healthcare decisions on behalf of the resident.

That person can ask a court to be appointed conservator over the resident or to be given authority to make a particular healthcare decision for the resident. In a conservatorship, a court appoints someone to act indefinitely on behalf of an incapacitated adult. The conservator can be given the power to determine medical treatment, place of residence, or finances of the incapacitated adult, called the conservatee.

**ASK THE EXPERTS—NO HEALTHCARE AGENT**

My husband was in a car accident and is now unconscious in the hospital. He never completed an Advance Health Care Directive. Can I authorize medical treatment for him?

Yes, you can. California courts have allowed the nearest relative of an incapacitated resident to make healthcare decisions for that person as long as no one else has been appointed to make them. However, some healthcare providers may be hesitant to accept the healthcare decision of the nearest relative without formal documentation such as an AHCD unless the proper decision is obvious, or the entire family agrees with the decision.

**ASK THE EXPERTS—REQUIRING AN AHCD**

Can my brother’s assisted living facility require him to sign an Advance Health Care Directive?

No, it cannot. California law requires an assisted living facility to give each incoming resident written information about the right to make decisions concerning medical care, including the option to create an AHCD or other type of healthcare directive. California law prohibits facilities from requiring a resident to sign an Advance Health Care Directive or other directive for health care as a condition for admission to or continued stay in the facility.
The court determines the scope of a conservator’s powers. Conservators are not authorized to make healthcare decisions on behalf of a conservatee unless two conditions are met. First, the court must determine that the conservatee lacks the capacity to give an informed consent for medical treatment. Second, the court must order that the conservator be given the power to make healthcare decisions for the conservatee.

Conservators may not place a resident in a locked facility unless they receive special court approval.

If an incapacitated resident does not need a conservator indefinitely, a family member, friend, or other interested person can ask, or petition, the court for authority over a particular healthcare decision for the resident. Unlike a conservatorship, this procedure does not grant the petitioner authority over the resident’s place of residence or finances. In addition, the authority of the petitioner expires at the conclusion of that particular healthcare treatment.

Conservators may not place a resident in a locked facility unless they receive special court approval.

Anyone interested in becoming a conservator or gaining a particular healthcare authorization on behalf of a resident should consult an attorney.

Comparison: AHCD versus Conservatorship

If available, an Advance Health Care Directive is better than a conservatorship because it allows a resident, rather than the Court, to control future healthcare decisions. In an AHCD, a resident can appoint an agent to make decisions for him if he should become incapacitated, and can also state his preferences regarding future healthcare, such as whether to authorize life-sustaining treatment.

If a resident has never completed an AHCD and becomes incapacitated, a conservatorship may be necessary. Unlike an AHCD, a conservatorship involves a legal proceeding, is costly, and generally takes longer than two months to complete. In a conservatorship, the judge appoints the conservator and decides
what types of decisions the conservator can make. A conservator can be a family member, friend, or professional. An appointed conservator might not have any knowledge about the resident’s healthcare preferences.

**End of Life Decisions**
Under California law, adults who can make their own decisions have the right to accept or refuse medical treatment or life-sustaining procedures that might hasten their death. That includes, for example, the right to refuse artificial nutrition through a feeding tube or hydration through intravenous fluids.

To make sure that residents’ wishes regarding life-sustaining treatment are followed, residents should express their wishes in these documents commonly recognized by healthcare providers:

- AHCDs
- Do Not Resuscitate Forms
- Physician Orders for Life-Sustaining Treatment (POLST)

**Under California law, residents may choose to make healthcare decisions that likely will hasten their death.**

**Do Not Resuscitate Orders**
Residents who wish to authorize healthcare providers and emergency medical services to withhold resuscitative measures such as cardiopulmonary resuscitation (CPR) must complete a written document. The law requires that such a document, commonly referred to as a *Pre-Hospital Do Not Resuscitate* order, must also be signed by a physician. Neither witnesses nor notarizations are required. A Pre-Hospital Do Not Resuscitate Order must be on a special form and a patient should request and wear a MedicAlert bracelet.

Residents with a DNR order typically choose not to receive any of a number of so-called heroic measures, including the following:

- CPR
- Defibrillation (electric shocks to the heart)
- Mechanical ventilation (assisted breathing using mechanical devices)
- Medications such as adrenalin given to start the heart beating again if it stops
Effect on Other Medical Treatments
DNR orders apply only when the heartbeat or breathing stops. They do not affect other treatments given before the heartbeat or breathing has stopped. Residents with DNR orders receive full treatment for pain, shortness of breath, bleeding, or blockages of the airways.

DNR orders apply only when the heartbeat or breathing stops. They do not affect other treatments given before the heartbeat or breathing has stopped.

Revoking a DNR Order
A resident can revoke a DNR order at any time. A resident who wishes to receive full treatment, such as CPR or defibrillation, should ask his healthcare provider and family to destroy all copies of the DNR order. A resident with a DNR order who wishes to receive full treatment may inform paramedics and other emergency medical personnel to ignore the DNR order, but communicating that wish in the midst of a medical emergency might be difficult or impossible.

A resident can revoke a Do Not Resuscitate order at any time.

Hospital DNR Orders
Pre-Hospital Do Not Resuscitate orders are typically used in non-hospital settings such as an individual’s home, assisted living facility, or nursing home.

As a result, many hospitals may not be familiar with Pre-Hospital DNR forms. On admission to a hospital, residents (or their agents) who do not want resuscitative measures should discuss their wishes with the attending physician as soon as possible, so that the physician can issue the appropriate in-hospital DNR order.

Living Wills and DNR Orders
Some people list their healthcare desires by using documents not recognized by law. For example, many people complete a document commonly called a living will. These documents list a preference to receive or not receive life-sustaining medical treatment under certain circumstances.

People with a living will should complete an AHCD, a POLST form, or a DNR form, as appropriate.

Physician Orders for Life-Sustaining Treatment (POLST)
A Physician Order for Life-Sustaining Treatment (POLST) form is a document that converts a person’s wishes about life-sustaining measures and resuscitation into physician orders, which can then be acted on immediately by healthcare providers. POLST forms are intended to help seriously ill persons and healthcare professionals discuss, develop, and implement care plans that reflect the person’s wishes.

The POLST form is a standardized form that must be signed by the person and his
physician. If the person lacks decision-making capability, the person’s legal representative can sign the form in his place. POLST forms can be revised or revoked at any time by the person or, if the person lacks capacity, by his legal representative. Revisions by legal representatives cannot be inconsistent with the resident’s expressed wishes.

Because a POLST form is a physician’s order, it is supposed to be honored and recognized by healthcare providers everywhere, regardless of whether an individual is in the hospital, at home, or in an assisted living facility. Residents are not required to complete POLST forms. However, if a resident does complete a POLST form, healthcare providers are required to treat the resident in accordance with his wishes.
POLST forms are supposed to be honored by healthcare providers everywhere, regardless of whether an individual is in the hospital, at home, or in an assisted living facility.

Comparison: POLST versus AHCD versus DNR

POLST forms are intended to complement but not replace an Advance Health Care Directive. AHCDs allow individuals to appoint an agent to speak on their behalf should they become unable to speak for themselves. They also set forth specific wishes about future healthcare. AHCDs provide a broad outline of an individual’s wishes for end-of-life care and may be filled out by any adult, regardless of health condition. AHCDs are not physician orders, however, and may not be available when needed.

In contrast, POLST forms are designed for seriously ill persons to identify their specific wishes on key end-of-life medical decisions. Additionally, a POLST form is a physician order and is designed to travel with a person from one treatment facility to another.

TO LEARN MORE

A Pre-Hospital Do Not Resuscitate form may be obtained from the California Emergency Medical Services Authority (CEMSA) website at www.emsa.ca.gov (search: “dnr form”) or by calling (916) 322-4336.

Do Not Resuscitate bracelets and medallions may be obtained from the MedicAlert Foundation: www.medicalert.org, (888) 633-4298.

These forms, bracelets, and medallions are honored by paramedics throughout California.

For POLST forms and additional information about end-of-life care, contact the Coalition for Compassionate Care of California at www.coalitionccc.org or (916) 489-2222.

For Advance Health Care Directive forms, contact Bet Tzedek Legal Services at www.bettzedek.org or (323) 939-0506. You may also contact at www.oag.ca.gov (search: “probate code advance health care”)

For A Pre-Hospital Do Not Resuscitate form, contact the California Emergency Medical Services Authority (CEMSA) website at www.emsa.ca.gov (search: “dnr form”) or by calling (916) 322-4336.

For Do Not Resuscitate bracelets and medallions, contact the MedicAlert Foundation: www.medicalert.org, (888) 633-4298.

These forms, bracelets, and medallions are honored by paramedics throughout California.

TO LEARN MORE

For POLST forms and additional information about end-of-life care, contact the Coalition for Compassionate Care of California at www.coalitionccc.org or (916) 489-2222.

For Advance Health Care Directive forms, contact Bet Tzedek Legal Services at www.bettzedek.org or (323) 939-0506. You may also contact at www.oag.ca.gov (search: “probate code advance health care”).
POLST forms also differ from a DNR in significant ways. A DNR addresses only the decision to forgo cardiopulmonary resuscitation. A POLST form, however, addresses a range of life-sustaining measures and allows a person to choose treatment or forgo it, as he sees fit.

ASK THE EXPERTS—HALTING LIFE-SUSTAINING TREATMENT

Can an incapacitated resident be allowed to die if he didn’t execute a legal request for limited medical treatment?

Yes, he can. A court-appointed conservator or the resident’s nearest relative might have the authority to halt life-sustaining medical treatment. In addition, healthcare providers may accept informal, non-binding indications of a resident’s treatment desires. Contact a knowledgeable attorney for assistance.
RESOURCES
For more information on topics in this chapter, consult the following agencies, online resources, and the legal citations on which the information is based.

Agencies
• Bet Tzedek Legal Services: www.bettzedek.org, (323) 939-0506
• California Advocates for Nursing Home Reform: www.canhr.org, (800) 474-1116
• California Department of Social Services, Community Care Licensing Division: www.cclld.ca.gov, (916) 657-2592. (For phone numbers of Regional Offices, see Appendix B.)
• California Long-Term Care California Long-Term Care Ombudsman Program: www.aging.ca.gov/programs (search: “LTCOP”), Crisis Line (800) 231-4024. (For phone numbers of local Ombudsman Programs, see Appendix A.)

Print

Online
• California Department of Social Services, “Your Right To Make Decisions About Medical Treatment”: www.cclld.ca.gov (search: “PUB 325”)
• California Emergency Medical Services Authority: www.emsm.ca.gov (search: “dnr form”), (916) 322-4336
• California Medical Association: www.cmanet.org (search: “advance health care directive”), (800) 882-1262
• California Secretary of State, Advance Health Care Directive Registry: www.sos.ca.gov/ahcdr, (916) 653-3984
• Coalition for Compassionate Care of California: www.coalitionccc.org, (916) 489-2222
• MedicAlert Foundation: www.medicalert.org, (888) 633-4298
Legal Citations

The discussions in this chapter are based primarily on California Government Code, sections 27430-27436; California Probate Code, sections 1800-1898, 2100-2944, 3200-3211, and 4600-4805; California Health and Safety Code, sections 1569.74, 1569.156, and 7185-7194.5; Title 22 of the California Code of Regulations, sections 87465, 87468, and 87469; Conservatorship of Wendland, 26 Cal. 4th 519, 110 Cal. Rptr. 2d 412 (2001); 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).
Assisted living facilities are required to uphold the rights of their residents and provide them with quality care, but not all facilities do so. In determining how to resolve a problem with a facility, residents should consider the nature of the problem and their comfort level in discussing it with others. For example, a resident may feel comfortable talking about her lost dentures with facility staff but prefer that a family member or ombudsman handle issues involving neglect or abuse.

This chapter suggests strategies for ensuring that assisted living facilities comply with the law and provide the care that residents deserve.

**Informal Problem Resolution**
Assisted living residents have the right to express concerns, make complaints, and propose suggestions for improvements. Residents also have the right to have family members informed of their care. Residents and their families can form resident or family councils to negotiate with facilities to protect residents’ rights and to make recommendations to improve the quality of life at the facility.

**Residents have the right to have family members informed of their care.**

**Self-Advocacy**
An assisted living resident who is having problems at a facility should first discuss her concerns with facility staff. If the issues involve the resident’s care, the resident should request a care plan meeting. (For more information on care plan meetings, see Chapter 4, pages 40–41.) If the problem persists, the resident should talk to a supervisor, generally the facility’s administrator.

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

Whenever possible, the resident should base her position on legal requirements, such as those explained in this guide. An assisted living facility cannot refuse to perform a service required by law. For example, a facility must make reasonable efforts to protect a resident’s personal property. If facilities are not following the law, residents should insist that they do so.

**TIP:** Assisted living employees, like residents, enjoy positive feedback. If you are receiving good care, be sure to tell the staff member and her supervisor. Positive relationships with staff may result in better care and outcomes if problems arise. If you are not receiving good care, you should tell a staff member and, if necessary, the supervisor. If you do not speak up, your problem is unlikely to get better. In addition, the same thing may happen to you again or to other residents.
Resident Councils
Residents working together as a group can sometimes resolve problems individual residents cannot resolve on their own. Residents have the right to organize and participate in a resident council. The resident council may include residents and their family members.

If residents of an assisted living facility wish to form a resident council, the facility must assist the residents in establishing and maintaining the council. The facility must provide a meeting room and post meeting notices. The facility also must assist residents with disabilities to enable them to attend meetings. To permit a free exchange of ideas, the facility must allow at least part of each meeting to be conducted without the presence of facility personnel.

**TIP:** 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.

**Family Councils**
Family members and friends can organize a family council to discuss and address concerns of their loved ones and advocate for better care. Family councils can be powerful instruments of change, because they require facilities to address and respond to group concerns. They also can serve as educational forums for the exchange of information.

**TIP:** A resident has the right to have family members informed of issues related to the resident’s care and to have communications to the facility from family members answered promptly. Facility policies must be designed to promote regular family involvement with the resident.

A facility is required to encourage the organization of family councils. The family council may include residents, family members, and friends. The council may meet in private without facility staff. On request,
the facility must provide the family council with a meeting room and a prominent place on which to post meeting notices and other information.

**Long-Term Care Ombudsman Program**

Sometimes a resident cannot resolve an issue by discussing it with facility staff. The resident then may wish to call the local *Ombudsman Program* for assistance. This program, established by federal and state laws, provides free assistance to assisted living residents.

**What Is an Ombudsman?**

An ombudsman is a consumer advocate who investigates complaints and helps resolve problems. Ombudsmen include trained professional staff and community volunteers and are completely independent from assisted living facilities. Ombudsmen help to ensure that problems of assisted living residents are addressed and that the resident’s rights are protected.

In addition, residents, family, or friends may contact the Ombudsman for confidential consultation regarding a resident’s rights and help on how to address issues at the assisted living facility.

**TIP:** The Crisis Line for the Ombudsman Program at (800) 231-4024 is available 24 hours a day, 7 days a week, to take calls and refer complaints from residents.

If an Ombudsman is unable to resolve the problem, a resident may request that the Ombudsman file a complaint on her behalf with the California Department of Social Services.

**TO LEARN MORE**

To learn more about the California Long-Term Care Ombudsman Program, visit [www.aging.ca.gov/programs](http://www.aging.ca.gov/programs) (search: “LTCOP”). The Ombudsman Program is always looking for volunteers. Call your local office if you would like to volunteer to help residents of assisted living facilities and nursing homes. (For phone numbers of local Ombudsman Programs, see Appendix A.)

**Confidentiality**

Residents reporting a problem to the Ombudsman Program can keep their names confidential. Residents can also decide whether to participate in discussions between the Ombudsman and the facility to resolve their problem. In almost all instances, it is better to allow the ombudsman to reveal the resident’s name. It is extremely difficult to resolve most issues anonymously.

**Government Agencies**

California assisted living facilities are licensed, inspected, and regulated by the Community Care Licensing Division (CCLD).
of the California Department of Social Services (CDSS). (For phone numbers of Regional Offices, see Appendix B.) The CDSS periodically inspects each assisted living facility and also responds to complaints regarding facilities.

Inspections
The CDSS must conduct unannounced inspections of each California assisted living facility. However, the CDSS is required to conduct those inspections only once every five years (for most facilities). The CDSS 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 CDSS also must conduct annual unannounced inspections of a random 30% sample of all other assisted living facilities.

The state is required to conduct inspections of most assisted living facilities only once every five years.

Administrative Complaints
A resident who does not receive satisfactory results by talking with facility staff or working with the Ombudsman Program may wish to file a formal complaint with the California Department of Social Services (CDSS). The resident can make an oral or written complaint (confidential or otherwise) to the CDSS. The CDSS then must conduct an investigation of the facility, generally within ten days.

TIP: A resident should submit her complaint to the California Department of Social Services (CDSS) office in the region in which the facility is located. The name and telephone number of the CDSS regional office are on the facility’s license, which is required to be posted in the facility. A list of CDSS regional offices also is available on the CDSS website at www.cclld.ca.gov/res/pdf/ASC.pdf. (See Appendix B for a list of CDSS offices.)
Residents who do not receive satisfactory results by talking with a facility’s employees may wish to file a formal complaint with the CDSS.

After investigating the complaint, the CDSS may take the following steps:

- Force the facility to fix a problem.
- Force the facility to fix a problem and pay a money penalty to the State.
- Revoke or suspend the facility’s license.
- Find that the facility has broken no law.

If the CDSS finds that the facility must fix a problem, the CDSS must work with the facility to develop a plan of correction. Afterward, the CDSS must re-inspect the facility to ensure that the problem has been resolved by the date set forth in the plan of correction. The CDSS also must inform the resident of its proposed plan of action and share with her a written report of its findings.

**TIP:** A resident should submit her complaint to CDSS in writing to ensure that the investigator understands the problem and has copies of necessary documents. The complaint should describe all relevant information in a well-organized manner. A resident who needs assistance filing a complaint with CDSS may request an Ombudsman to file a complaint on her behalf. (For phone numbers of local Ombudsman Programs, see Appendix A.)

**ASK THE EXPERTS—PROTECTION FOR RESIDENT FILING AN ADMINISTRATIVE COMPLAINT**

My sister and I have exhausted all options for dealing with her assisted living facility about her care. She is afraid to file a complaint with the state because she thinks the facility will make life even more difficult for her. Can the facility do that?

It is illegal for an assisted living facility to retaliate against a resident for making a complaint to the California Department of Social Services or for having a complaint made on a resident’s behalf. In addition, a resident can choose to keep her name confidential and not disclosed to the facility. Sometimes it is better to speak up to resolve care issues. If the facility does not respond appropriately, filing a complaint with DPSS will certainly get their attention. Squeaky wheels do get the grease.

**Filing a Lawsuit**

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 an action or inaction of a facility has caused serious physical or emotional harm, a personal injury lawsuit may be appropriate.

If a facility has failed to properly protect a resident’s personal property, the resident could sue the facility for the value of the lost or stolen property. A lawsuit seeking
compensation for missing property can be brought in small claims court. (For more information, see Chapter 6, “Protecting Residents’ Property,” page 58.)

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

**TIP:** Residents or family members considering strategies involving lawsuits should consult an attorney knowledgeable and experienced in handling such cases.

**Elder Abuse**

The term *elder abuse* refers to the neglect, exploitation, or other mistreatment of a dependent adult or anyone who is 65 or older which results in physical harm or mental suffering. It can involve physical violence, emotional abuse, isolation, abandonment, abduction, or neglect. It also could involve the unlawful taking of money or property.

**TIP:** If a person suspects that an assisted living resident is the victim of mental, physical, or financial abuse, she should report the suspected abuse to the local law enforcement agency, Ombudsman Program, and the CDSS. (Phone numbers for the Ombudsman Programs and CDSS Regional Offices are listed in Appendices A and B.) Assisted living employees and other mandated reporters (physicians, nurses, police, clergy, bank employees, Adult Protective Service workers, home health agency employees) must report all cases of known or reasonably suspected physical abuse of assisted living facility residents to the local law enforcement agency, Ombudsman Program, and the CDSS. If the suspected abuse is not physical abuse, the reports must be made to either the local Ombudsman or the local law enforcement agency.

California has the Elder Adult and Dependent Adult Civil Protection Act which provides enhanced remedies in civil actions for abuse of elder and dependent adults. (California Welfare and Institutions Code Section 15600 and following.) A family can recover personal injury damages as well as attorney’s fees and punitive damages in some instances. A competent elder law attorney should be consulted if elder abuse is suspected.
RESOURCES

For more information on topics in this chapter, consult the following agencies, online and other electronic resources, and the legal citations on which the information is based.

Agencies

- Bet Tzedek Legal Services: www.bettzedek.org, (323) 939-0506
- Bureau of Medi-Cal Fraud & Elder Abuse (BMFEA): www.oag.ca.gov/bmfea, (800) 722-0432
- California Advocates for Nursing Home Reform: www.canhr.org, (800) 474-1116
- California Department of Social Services, Community Care Licensing Division: www.cccld.ca.gov, (916) 657-2592. (For phone numbers of Regional Offices, see Appendix B.)
- California Long-Term Care Ombudsman Program: www.aging.ca.gov/programs (search: “LTCOP”), Crisis Line (800) 231-4024. (For phone numbers of local Ombudsman Programs, see Appendix A.)
- National Association of Elder Law Attorneys: www.naela.org

Online

- California Advocates for Nursing Home Reform RCFE Fact Sheet, “Filing Complaints”: www.canhr.org/factsheets

Legal Citations

The discussions in this chapter are based primarily on Title 42 of the United States Code, section 3027(a) (12); California Business and Professions Code, sections 17200-17208; California Health and Safety Code, sections 1569.157, 1569.158, 1569.313, 1569.33, 1569.35, 1569.351, 1569.37, 1569.49, and 1569.50; California Welfare and Institutions Code, sections 9700-9726.1, 15630, and 15630.1; and Title 22 of the California Code of Regulations, sections 87221, 87468, 87755-87759, 87761, and 87775.
APPENDICES
## APPENDIX A
### CALIFORNIA LONG-TERM CARE OMBUDSMAN PROGRAMS

**Statewide Crisis Line:** (800) 231-4024

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OUR MISSION

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

Bet Tzedek (Hebrew for “The House of Justice”) 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 Bet Tzedek, 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

Bet Tzedek gratefully acknowledges the City of Los Angeles Department of Aging for funding this publication.