

SUPPLEMENT TO THE STATEMENT OF REASONS

This document includes information resulting from comments received by the Department during the 45-day comment period. Bracketed, bold text contains a description and/or explanation of revisions to the text following the 45-day comment period.

A change is being made to subsection (b) of the regulations, and the date when the regulations become operative is being modified. Several changes, discussed below, are proposed for the Standard Admission Agreement (SAA) that has been incorporated by reference into the regulations.

Sections 72516(b) and 73518(b) are amended to read:

“(b) Except to enter information specific to the facility or the resident in blank spaces provided in the Standard Admission Agreement form or its attachments, the licensee shall not alter the Standard Admission Agreement unless directed to do so by the Department. A licensee wishing to receive direction from the Department that would enable the licensee to alter the Standard Admission Agreement shall submit a request to the Department. The request shall:

- (1) include the identity of the facility;
- (2) identify the specific language in the Standard Admission Agreement that the facility is unable to employ;
- (3) identify the specific location and language that is to be deleted, amended or appended to the form; and,
- (4) contain substantiating evidence identifying the reason that the use of the Standard Admission Agreement without the requested modification would not be possible because of some unique aspect of the facility’s operation or would make it highly likely that the use of the language will create a new cause of action against the facility related to its compliance with existing statutory or regulatory requirements governing the care provided to nursing facility residents. The Department shall respond within 60 days of the receipt of the request.”

[Several commenters noted that requesting a modification of the SAA is not the same as requesting program flexibility from a regulation. The Department is therefore amending the regulation to separate requests that the Department direct a facility to alter the SAA from requests for program flexibility, and to provide facilities guidelines to use to specify the reason that the modification is required by the facility. The regulation will also state that the Department will respond to the request within 60 days of the date it is received. The court in the Parkside case required that the Department provide guidelines and time frames for the processing of facilities’ requests. The court and several commenters also suggested that facilities needed more time than currently provided in the program

flexibility process to implement the SAA or request that modifications be made to it. The delay in the operative date to six-months after the regulations are filed with the Secretary of State provides the additional time.]

CDPH 327 (04/11) California Standard Admission Agreement for Skilled Nursing Facilities and Intermediate Care Facilities (Standard Admission Agreement)

1. The following language is added as the third paragraph in Section I, Preamble:

If our facility participates in the Medi-Cal or Medicare programs, we will keep survey, certification and complaint investigation reports for the past three years and will make these reports available for anyone to review upon request.

[Several commenters noted that this language is now required because of the provisions of the federal Patient Protection and Affordable Care Act, sections 1395i-3(d)(1)(C) and 1396r(d)(1)(V) [should probably be (C)] of title 42 of the United States Code.]

2. The following language is added to substitute for the current language as the first paragraph in Section VI, Transfers and Discharges:

Unless you have been involuntarily committed to the facility, you may leave our Facility at any time without prior notice to us. If the right to make health care decisions for you has devolved to another person, that person must consent to your leaving the facility. We will help arrange for your voluntary discharge or transfer to another facility.

[Several commenters suggested that the language in the current agreement was too broad, and did not address problems raised because of the presence of involuntarily committed or cognitively impaired residents in facilities. While the court in the Parkside case had initially required that the language be reworded, at a hearing on March 11, 2008, the court stated that rewording would not be necessary if the problematic language was deleted; the court believed that the problems could be addressed and corrected during the regulatory adoption process. The language now being adopted is the result of comments received during that process.]

The chambers meeting referenced in the Initial Statement of Reasons (ISOR) was actually a hearing. A transcript of the March 11, 2008 hearing is now included as a new document relied upon for the rulemaking record.]

3. The following language is added to substitute the current language as the second paragraph in Section VI, Transfers and Discharges:

Except in an emergency, we will not transfer you to another room within our Facility against your wishes, unless we give prior reasonable written notice to you determined on a case by case basis in accord with applicable state and federal requirements. For example, you have a right to refuse the transfer if the purpose of the transfer is to move you to or from a Medicare-certified bed.

[The court in the Parkside case required that the language be reworded to remove a 30-days notice requirement applicable to room-to-room transfers within a facility. This language is designed to bring the language into compliance with the court order requiring reasonable notice and mandating compliance with both state and federal requirements applicable to room to room transfers. The language implements the requirements of the court order, state law, and sections 1395i-3(c)(1)(A)(x) and 1396r(c)(1)(A)(x) of title 42 of the United States Code which prohibit transfers from one room to another if “a purpose of the transfer is to relocate the resident from a portion of the facility that” is certified for Medicare to a portion of the facility that is not certified for Medicare, or from a portion of the facility that is not certified for Medicare to a portion of the facility that is certified for Medicare.]

Standard Admission Agreement, Attachment E

4. The sentence, “Re-disclosure in such cases may not be limited by state or federal law,” is added at the end of the sixth paragraph of Attachment E, to avoid the possibility that non-health care provider recipients of otherwise private health information might believe a resident has authorized them to re-disclose that information without limitation, and to make it clear that this is a caution to the resident about the extent of the protection provided by current law.

[A commenter noted the possibility of a misunderstanding arising from the current language in Attachment E, and requested this addition to prevent the possibility of that occurring.]

Standard Admission Agreement, Attachment F

5. Sections 72528 and 73524 of title 22 of the California Code of Regulations are added to the Resident Bill of Rights, Attachment F.

[A commenter requested this addition because, even though the provisions contained in these sections are not facility obligations, they are still resident rights. The Department agrees with this comment and has included the sections requested since reference is made to them in sections 72527 and 73523 which are already contained in Attachment F.]

6. A current version of section 1599.1 of the Health and Safety Code, containing subsection (i), is substituted for the version in the Resident Bill of Rights in the SAA included in the 45-day notice.

[A commenter noted that the Resident Bill of Rights, Attachment F, did not have the most up-to-date version of section 1599.1 of the Health and Safety Code. This substitution corrects that defect.]

7. The language in the current version of Attachment F that indicates certain provisions of the Code of Federal Regulations only apply to facilities certified to participate in the Medicare and or Medi-Cal programs is deleted. That language provided:

[NOTE: THIS COMPILATION OF RESIDENT RIGHTS APPLIES TO ALL RESIDENTS IN LICENSED NURSING FACILITIES THAT ARE ALSO CERTIFIED UNDER 42CFR PL 483.]

[A commenter noted that subsection (i) of section 1599.1 of the Health and Safety Code provided that effective July 1, 2007, Sections 483.10, 483.12, 483.13, and 483.15 of Title 42 of the Code of Federal Regulations in effect on July 1, 2006, shall apply to each skilled nursing facility and intermediate care facility, regardless of a resident's payment source or the Medi-Cal or Medicare certification status of the skilled nursing facility or intermediate care facility in which the resident resides. Therefore the deleted language is no longer a correct statement of the law.]