



CDSS

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ARNOLD SCHWARZENEGGER
GOVERNOR

December 30, 2009

Joel S. Goldman
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105

Dear Mr. Goldman:

Thank you for your inquiry sent to Tricia Nishio, via email, on November 6, 2009.

In your email, you state that “We (the provider community) have always presumed that if someone comes in as a private pay resident and their admission agreement requires that they pay a stated rate, we have the right to evict them if they are unable to pay the stated rate.” You further reference the California Advocates for Nursing Home Reform website which states that while RCFEs can decline to admit Supplemental Security Income (SSI) recipients, if a resident who is admitted as private pay subsequently becomes SSI, the RCFE must then accept the SSI rate. We understand your question to be whether a person, who is admitted to an RCFE as a private pay resident and later becomes a Supplemental Security Income (SSI)/State Supplementary Payment (SSP) recipient resulting in a failure to pay the previously agreed upon private pay rate, can be lawfully evicted.

The grounds for the eviction of a RCFE resident are listed in Title 22 Section 87224. It reads as follows:

- (a) The licensee may, upon thirty (30) days written notice to the resident, evict the resident for one or more of the following reasons:
 - (1) Nonpayment of the rate for basic services within ten days of the due date.
 - (2) Failure of the resident to comply with state or local law after receiving written notice of the alleged violation.
 - (3) Failure of the resident to comply with general policies of the facility. Said general policies must be in writing, must be for the purpose of making it possible for residents to live together and must be made part of the admission agreement.

- (4) If, after admission, it is determined that the resident has a need not previously identified and a reappraisal has been conducted pursuant to Section 87587, and the licensee and the person who performs the reappraisal believe that the facility is not appropriate for the resident.
- (5) Change of use of the facility.

Basic services” are defined and enumerated in Health and Safety Code section 1569.312 and Title 22 Regulation section 87101(b)(2) and 87464(f). Title 22 Regulation section 87464(e) provides that “If the resident is an SSI/SSP recipient, then the basic services shall be provided and/or made available at the basic rate at no additional charge to the resident. “Basic rate” is defined in Title 22 Regulation section 87101(b)(1) as “the SSI/SSP established rate, which does not include that amount allocated for the recipient’s personal and incidental needs.” The “established rate” means the rate that is established pursuant to Welfare and Institutions Code section 12200.

When a resident becomes a recipient of SSI/SSP benefits, this represents a resident’s change of income status. Therefore, under these specific circumstances, once the resident is admitted to a RCFE, the facility cannot evict the resident for a change in the resident’s income status. Title 22 Regulation section(s) 87464(e) and 87101(b)(1) provide that residents who are recipients of SSI/SSP shall have basic services provided/made available at the SSI/SSP established rate. Thus, when a RCFE resident becomes a SSI/SSP recipient, the facility must continue to provide basic services to the resident at the SSI/SSP basic rate.

Thank you for your inquiry. This information has already been shared verbally with Heather Harrison from the California Assisted Living Association. If you have any additional questions or concerns, please contact me at (916) 324-4312.

Sincerely,

THOMAS STAHL, *Chief*
Policy Development Bureau
Community Care Licensing Division