



# RCFE Closures: Residents' Rights and Protections

The RCFE Relocation Protection Act of 2008 and subsequent legislation established relocation rights and protections for residents evicted when RCFEs close due to the sale of the business for different uses, and forfeiture of the RCFE license resulting from the sale of the property, surrender of the license or abandonment of the facility. (Note: This law does not apply when the facility is being sold or transferred, and will continue to be used as a RCFE.) The protections are designed to minimize transfer trauma, ensure that residents are transferred safely, reduce some of the financial hardships, and provide oversight of the process by the licensing agency, Community Care Licensing.

Note, effective January 1, 2015, any operator whose license has been revoked or forfeited for abandoning a facility and its residents will be permanently ineligible for reinstatement of a license.

## Written Notice and Documentation Requirements

The facility must provide a 60-day written notice. This notice must be delivered to the resident, to his/her agent or legal representative, and to Community Care Licensing. When closures affect 7 or more residents, the notice cannot be issued until the facility submits a closure plan, and it is approved by the licensing agency. The notice must contain the following elements:

- Reason or reasons for eviction, with specific facts pertaining to each reason;
- A copy of the resident's current service plan;
- Relocation evaluation;
- A list of referral agencies;
- Notification of the resident's right to contact the licensing agency to investigate the reasons given for the eviction; and
- Address and telephone number of the local Long Term Care Ombudsman program.

The facility shall not accept new residents or enter into new admission agreements after it has issued the written notice of eviction.

## Relocation Evaluation

Based on the current service plan, the facility is responsible to prepare a relocation evaluation for each resident including recommendations on the type of facility that would meet the needs of the resident; and a listing of facilities, within a 60-mile radius of the closing facility, that meet the resident's needs.

In addition, the facility must meet with the resident and his/her legal representative to discuss the relocation evaluation within 30 days of issuing the eviction notice.

## Closure Plan

If 7 or more residents will be relocated due to the closure, the facility must prepare and submit a closure plan to Community Care Licensing for approval. The plan must indicate that there is a relocation evaluation for each resident, and indicate the staff available to assist in the transfers. The facility is prohibited from issuing the 60-day notices or requiring any resident to transfer until approval is granted by licensing.

Upon approval by licensing, the facility must send a copy of the closure plan to the local Long Term Care Ombudsman Program.

After submitting the closure plan, the facility is prohibited from admitting new residents and entering in admission agreements with new residents.

### **Rights of Residents**

In addition to the right to a 60-day notice, relocation evaluation, meeting with staff on the evaluation, closure plan approval by licensing when 7 or more residents are affected, and to file a complaint with licensing, the resident also has the following rights:

- Refund of prepaid monthly fees on a proportional per diem basis. If the resident gives five days notice before leaving the facility, the refund will be paid at the time the resident leaves the facility, or otherwise within seven days from the date that the resident leaves the facility and the unit is vacated;
- Refund of pre-admission fees in excess of \$500: a refund of 100% if paid within 6 months before the notice of eviction; 75% if paid more than 6 months but not more than 12 months; 50% if paid more than 12 months but not more than 18 months; and 25% if paid more than 18 months but not more than 24 months. (Note: No pre-admission fee refund is required, but is permissible, if paid 25 months or more before the notice of eviction.); and
- File a civil action for a facility's violation of residents' relocation rights including costs and attorney's fees.

### **Relocation Protections**

In addition to the rights outlined above, there are also these protections:

- The facility must submit a written report on any eviction to licensing within five days;
- Fines can be levied per violation per day to promote compliance;
- If it is necessary to protect the residents from abuse, abandonment or other threat to their health and safety, the licensing agency shall take any necessary action to minimize trauma for the residents, including appointment of a temporary manager to care for residents if appropriate;
- The licensing agency must seek the help of local agencies and advocacy organizations to assist in the transfer and relocation when there is a determination that the health and safety of residents is at risk;
- The licensing agency can enlist the assistance of the Attorney General, local District Attorney or city attorney to seek injunctive relief and damages against the facility for failure to provide required relocation services; and
- Within 10 days of all residents having left the facility, the operator must submit a final list of names and new locations of relocated residents to both licensing and the local Long Term Care Ombudsman Program, facilitating follow up to ensure the health, safety and well being of residents.

*The most relevant laws are found in California Health and Safety Code Sections 1569.16, 1569.481, 1569.50, 1569.651(i), 1569.682, 1569.884, and 1569.886. The codes and regulations dealing with evictions are also pertinent: California Health and Safety Code Sections 1569.37, 1569.54, 1569.655, 1569.683, 1569.686, and 1569.73; California Civil Code Section 1940; and California Code of Regulations, Title 22, Division 6, Sections 87223, 87224, 87612 and 87637.*