COVID-19 Vaccines are a Light at the End of the Tunnel, But Serious Questions Remain for Residents of Nursing Homes and Assisted Living Facilities

By Mike Dark, CANHR Staff Attorney

After a ten-month battle with the most serious public health crisis in the history of long term care in the U.S., the cavalry is finally arriving, in the form of vaccines that have already been given Emergency Use Authorization (EUA) by regulators. Still more vaccines await in the pipeline, perhaps for January or February.

While the speedy development of these vaccines is an historic accomplishment, plans for their distribution and administration in the long term care setting are already troubled by the kind of decentralized decision-making and misunderstanding of the needs of long term care residents that have hobbled the public health response to the pandemic to date. Addressing these hurdles will be essential to the safe and effective rollout of these promising treatments to communities ravaged by the virus.

First, the good news: both vaccines have proven to be effective at preventing about 95% of symptomatic disease in the populations being studied in phase three trials, a remarkable benchmark rivaling the efficacy of the polio vaccine. Nevertheless, both drugs, one developed by Pfizer and the other by Moderna, still need considerable further study before their safety and side effect profiles are fully understood. Neither has been systematically tested in long term care settings such as nursing homes, and their ability to reduce the transmission of the virus is unknown.

Importantly, neither has been fully vetted through the usual three-phase process for approval by the Food and Drug Administration. Instead, manufacturers of both drugs sought approval through the EUA process, which allows for the immediate use of promising treatments even before full safety testing is completed in the final phase of drug trials, so long as benefits strongly outweigh potential harm. Under the EUA process, safety testing will instead be completed while the drugs are made available to the public.

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Goodbye to 2020 and Thank you for your support!

While we are not reluctant to say goodbye to 2020, it was a year we will remember for a very long time. We want to thank everyone who generously contributed money, time and/or resources to CANHR throughout 2020. A very special thank-you goes to those of you who volunteered to teach at our (Zoom) trainings and to write articles for our newsletters; thank you to those of you who wrote letters to legislators in support of our bills; and a special thank you to those who advocated on behalf of your family members, friends and residents in long term care to make their lives better, and in many cases, to save their lives.

We don’t know what 2021 will bring, but we do know that this has been a terrible year for long term care residents, who have been denied family members, friends and other visitors, along with a total lack of oversight, leaving them prisoners of this terrible pandemic. All of us at CANHR will work in the year 2021 to reform a long term care “system” that leaves so many vulnerable to the whims of a for-profit industry and a reluctant enforcement agency.

We wish you joy, wellness and peace in 2021, and, with your support, we’ll continue to advocate for the rights of all long term care residents.

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Planned giving leaves a legacy to honor your memory or that of someone you love and helps to ensure the future of CANHR. With careful planning, it is possible to reduce or eliminate income and estate taxes while turning appreciated assets into income for yourself or others. Planned giving can take a number of forms, including gifts by will, gifts of life insurance or annuities or gifts via a revocable living trust or charitable remainder trust. Call the CANHR office or email patm@canhr.org to get more information and a free booklet on planned giving.

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COVID-19 Vaccines

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The Pfizer drug received its emergency use approval December 11, while the Moderna vaccine was approved under these provisions December 17.

Because both vaccines are in only the early stages of production, and because demand for the drugs during the surging pandemic is so high, the next few months will see a drug rationing program unfold the likes of which has not been seen since World War II. To rationalize this process, the U.S. Centers for Disease Control sought the advice of a panel of scientists, the Advisory Committee on Immunization Practices (ACIP), which was tasked with setting priorities for the distribution of vaccines over the next several months.

After a transparent public process of weighing scientific, implementation, and ethical considerations, ACIP determined that top priority, termed 1A, should be given to healthcare workers and to residents of long term care facilities. On December 20 ACIP voted to include “frontline essential workers” and people 75 years of age and older as next-in-line for eligibility under 1B Category, a group that would include about 49 million Americans. While category 1C has yet to be voted on, it is likely to encompass persons between the ages of 65 and 74, those between 16 and 64 who have high-risk underlying conditions and remaining essential workers.

California engaged in a simultaneous review of these priorities by forming a Scientific Safety Review Workgroup and a Community Vaccine Advisory Committee, consisting of stakeholder organizations representing a broad array of California communities, including CANHR. These groups quickly adopted the same definition of Category 1A to include residents of long term care facilities. These committees are now turning to the group to be included in priority categories 1A and 1B.

While the testing and prioritization of these new vaccines has been organized and logical, far less attention has been paid to how vaccines will actually make their way to residents of California’s nursing home and assisted living facilities, and how these residents will be able to exercise consent in choosing to receive a vaccine. Moreover, the window for planning this roll-out is vanishingly small.

To enable residents of long term care to participate meaningfully in decisions about vaccination, physicians have a responsibility to provide information and help patients understand the risks and benefits of this treatment. There are three areas that should be of special concern to long term care residents and their families.

First, many long term care residents do not even know the name of their physician, and their isolation over the last nine months as a result of visitation restrictions makes them unlikely to benefit from mass media efforts to educate the public regarding vaccines. A tailored campaign addressing the special needs of long term care residents is called for, perhaps including a short video in the appropriate language that can be shown to residents explaining the vaccines and their risks and benefits, with subtext for residents who are hearing-impaired. Such a video could usefully supplement, but not replace, a discussion with a physician.

Second, and relatedly, the support of family will be essential for residents weighing whether to consent to vaccination. Current restrictions on visitation posed by the state agencies and by county public health departments may make it difficult for family to provide this assistance. In addition, hearing and cognitive limitations and inconsistent availability of alternative means of contact such as Facetime underscore the importance that this support be provided in person. This problem could be addressed by the issuance of an All Facilities Letter by the California Department of Public Health and a Provider Information Notice by the Department of Social Services’ Community Care Licensing Division mandating that facilities permit a family member, with appropriate safety measures in place, to enter a facility to provide this support in the context of vaccination decision-making.

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COVID-19 Vaccines

Thirdly, special concerns exist about efforts to obtain consent from residents with limited capacity. Close to two-thirds of all U.S. nursing home residents have some form of cognitive impairment such as Alzheimer’s disease. While legal surrogates such as family members with power of attorney can make decisions for residents who are deemed to lack capacity, these formal arrangements are uncommon, and decision making is often left to informal arrangements not currently recognized by California law. Safe and effective COVID-19 vaccination, while essential for the well-being of long term care residents, is an unusually controversial topic, even within families. Consequently, a clear statement of legal authority of family members to make such decisions for residents lacking capacity is an important safeguard both for residents and for family decisionmakers.

Finally, for all types of residents, whether or not they are deemed to have capacity, a standardized form with appropriate disclosures should be developed and employed across all types of facilities to document that appropriate efforts have been made to obtain the consent of residents.

Vastly complicating the adoption of such measures is the disorganized and decentralized decision making that has characterized the State’s approach to the pandemic thus far. The State asserts that only county departments of health have authority to execute on plans to vaccinate elders in facilities, and some counties, such as Los Angeles, have in turn left it to facilities themselves to coordinate and manage their own vaccine responses, an approach that has proved to be disastrous at every turn thus far in the pandemic.

It will be critical in the next weeks for the State to take a much stronger oversight role in ensuring that facilities follow the law in obtaining consent to vaccinations, a necessary about-face to the largely laissez-faire approach regulators have taken to facility oversight during the pandemic thus far.

When we are so close to the end of this marathon, it is essential that state agencies not shirk their responsibilities to ensure that we all make it over the finish line together.

Los Angeles Times Reports L.A. County is Epicenter of Hospice Fraud and Abuse

On December 9, the Los Angeles Times published a remarkable set of articles describing alarming growth of for-profit hospices in Los Angeles County and California that are engaging in what the Times described as “audacious, widespread fraud in an industry meant to provide comforting care” to those who are dying. In Los Angeles County, the number of hospices has multiplied sixfold during the last decade and now is home to over 600 agencies, the highest concentration of hospices in the nation. The cities of Burbank, Glendale and Van Nuys each have more hospices than the entire states of New York, Florida, and many others. Virtually all of the explosive growth has involved for-profit operators. In Los Angeles County, 97% of hospices are for-profit.

Rampant fraud and abuse have accompanied the explosive growth. The Times investigation found hundreds of instances in which California hospice patients were harmed, neglected or put at serious risk. According to the Times, quality of care failures ran the gamut from mismanaged medications to neglected wounds that became infested with maggots. In some cases, nurses and home health aides repeatedly missed appointments or slept on the job as patients lay writhing in pain. Pointing out the need for reform, the Times reported that those responsible for fraud, abuse and neglect rarely suffer any consequences due to extremely poor oversight and the almost complete absence of any penalties.

Read the articles:

Dying Californians suffer harm and neglect from an industry meant to comfort them

End-of-life care has boomed in California. So has fraud targeting older Americans

What you need to know if you or a loved one requires end-of-life care

California Department of Public Health Moving Forward with Divisive Plan to Turn Inspectors into Consultants to Nursing Home Operators

On November 20, 2020, the California Department of Public Health (CDPH) wrote CANHR rejecting CANHR’s call to withdraw its misguided plan to turn nursing home inspectors into consultants to nursing homes. After spending the summer touting the benefits of a consultative role for inspectors, CDPH now disingenuously claims that its new survey model will not be consultative. Its actual plan and revised duty statement for inspectors show otherwise. The highly controversial duty statement is the subject of an Unfair Practice Charge filed on August 28 by SEIU Local 1000, the union representing RN inspectors, against CDPH.

New Income Limit for the Medi-Cal Aged and Disabled Federal Poverty Level Program Effective December 1st

Tens of thousands of Californians are newly eligible for Medi-Cal without a share-of-cost under legislation that was implemented on December 1 in California.

Effective December 1, 2020, the income threshold for the Aged, Blind & Disabled Federal Poverty Level Program (ABD FPL) has increased to 138% of the Federal Poverty Level. The new threshold is $1,468 for a single individual and $1,983 for a couple in 2020. As of August 1, 2020, counties will no longer use the standard disregard of $230.00 for an individual or $310.00 for a couple when evaluating eligibility. All applicable program deductions such as the $20 any income, health insurance premiums and $65.00 and one half earned income deductions still apply. Impacted beneficiaries will have their eligibility recalculated in December 2020. For example, individuals who were previously paying a share of cost under the medically needy program or paying a premium under the 250% working disabled program will be reevaluated under the new threshold. For more information see the ACWDL 20-04 and MEDIL 20-29.

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Associated Press Article Describes a Wave of Deaths from Neglect in Nursing Homes During the Pandemic

In addition to the over 90,000 reported deaths due to COVID-19 in the nation’s nursing homes since March, the Associated Press is reporting findings that more than 40,000 additional residents died prematurely due to other causes. Those “excess deaths” were identified through an analysis conducted by Stephen Kaye, a professor at the Institute on Health and Aging at the University of California, San Francisco. The November 18 AP article – Not just COVID: Nursing home neglect deaths surge in shadows – describes a tandem wave of horrific deaths in nursing homes due to extreme neglect and isolation. The analysis found that for every two COVID-19 victims in nursing homes, there is another who died prematurely of other causes.

New Study Examines COVID-19 Cases and Deaths in California’s Nursing Homes

On December 1, the California Health Care Foundation released a new report – COVID-19 in California’s Nursing Homes: Factors Associated with Cases and Deaths – that was prepared by a team of researchers from UCSF, Cal Hospital Compare and IBM Watson Health. Early in the pandemic, the study found that low staffing levels and for-profit ownership were major factors triggering outbreaks and deaths in California nursing homes. For-profit nursing homes had COVID-19 case rates five to six times higher than those of nonprofit and government-run nursing homes while facilities with RN staffing greater than 0.8 hours per resident day had 50 percent fewer COVID cases than nursing homes that staffed below that level.

As the pandemic spread, demographic factors including age and race were found to be significant risk factors. For example, nursing homes with higher percentages of Latino residents were found to have larger outbreaks than those with smaller populations of Latino residents.

The report contains a series of important recommendations on staffing, ownership oversight, health equity promotion, facility size and design, transparency and public reporting of data.

Nursing Home Complaints Undermined by CDPH Website Change

What happened? Due to a change in the way CDPH formats its on-line complaint form, people who file complaints against health facilities, including nursing homes, no longer see fields in which they can input their contact information. Therefore, complaints are being received as anonymous.

What can I do? If you have filed a complaint in 2020 and have not received a letter officially opening the investigation, re-file your complaint asap.

Can I still file complaints on-line? Yes, just be sure to enter your (the complainant’s) information in the “complainant information (optional)” box on the complaint website - unless of course you wish to remain anonymous. To file a complaint, go to https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/Complaint.aspx and enter the facility name. To open the complainant information input fields, click on the arrow in the “complainant information (optional)” box.

Read the Los Angeles Times article on the report: As virus again surges in California, race is a defining factor in nursing facilities, research shows

Read the San Francisco Chronicle article on the report: Coronavirus cases and deaths soared in nursing homes across California. Here’s why.
Repeated Failures of CDPH Endanger SNF Residents and Compromise Care

State’s Failure to Update Emergency COVID Policies Is Harming Nursing Home Residents

At the outset of the COVID pandemic, California’s Department of Public Health (CDPH) suspended its comprehensive surveys and waived the state minimum staffing requirements in nursing homes. These were justified as temporary emergency measures necessary to save lives at a very uncertain time. Ten months later, most of the state’s COVID policies have changed and evolved as our understanding of COVID developed but the suspended surveys and staffing waivers persist. These policies have far outlived their utility, are harming residents, and need to be retired.

The Failure to Reinstate Comprehensive Surveys

In early March, the federal government ordered states to suspend its comprehensive surveys, performed annually at nearly every nursing home in the country, in favor of infection control-focused surveys. The purpose of the suspension was to allow “inspectors to turn their focus on the most serious health and safety threats like infectious diseases and abuse.” This made some sense at the time: COVID was a largely unknown, terrible infectious disease and nursing homes were historically inept at infection control. Facilities needed a great deal of scrutiny related to their infection control measures to protect residents.

By August, the measures needed to limit the introduction and spread of COVID in nursing homes were better understood. In addition, many months of ignoring critical quality of care and quality of life issues had led to severe isolation and suffering of residents. Consequently, CMS amended its policy, ending the suspension on surveys, and in its own words, “instructed” the states to resume comprehensive surveys, assuming they have the PPE and staff to perform them.

In response, CDPH demurred and doubled down on its narrowly focused infection control surveys.

Inexplicably, four months after being instructed to resume comprehensive surveys, CDPH continues to refuse.

Without comprehensive surveys, all facets of resident care other than infection control go unexamined. This includes nursing care, bathing and grooming, therapy, ambulation, activities, nutrition, engagement, and many other quality of care and quality of life concerns. Failing to survey nursing homes would be harmful in the best of times; during COVID, it is malicious. Visitation remains shut down and the usual suspects for ensuring regulatory compliance, such as resident family members and representatives, have been banned from the facilities. Surveys are all the residents have for ensuring the standards of care are being regularly satisfied.

The state’s misguided insistence on infection control-or-bust can only be justified by its failure; i.e., facilities continue to screw up infection control. If the state’s best use of its oversight resources continues to be solely in the service of infection control, that means the thousands of infection control surveys performed since March have been very ineffective, in which case the state’s program needs to be discarded. If, on the other hand, the program has been successful and infection control has improved, the state needs to update its policy and recognize that a huge number of residents are dying not from COVID but from the tunnel vision oversight that has developed to combat COVID.

With all of the state’s surveyors focused on just infection control, California has alarming and strong evidence of excess deaths, overdrugging, underfeeding, massive isolation, and despondency in nursing homes. It is time for CDPH to reprioritize quality of care and quality of life in nursing homes. CDPH ought to be able to walk (infection control) and chew gum (comprehensive surveys) at the same times, especially when both are needed to keep residents from dying from abuse and neglect.

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In addition to suspending surveys in March, CDPH also waived the state requirement for 3.5 hours of direct care staff per resident, per day in nursing homes. Initially, the waiver was universal for all nursing homes. In June, the mechanics of the waiver changed, requiring facilities to apply for the waiver. However, the criteria were so broad that any facility that applied could receive a waiver. As of December, 2020, over 300 nursing homes, including some of the state’s worst, have been granted waivers. The waivers seem to be dispensed freely upon request.

When COVID hit California, residents were never in more need of adequate staffing - CDPH surveyors were relegated to desk duty, long term care Ombudsman programs were locked out, and families who had filled significant gaps in care provision were banned. Nearly all of the safety nets to catch and prevent the horrible neglect that comes from understaffing were eviscerated and yet CDPH told facilities they could ignore the state staffing minimums. Incredibly, CDPH did not stop there; not only could facilities operate with staffing levels below the state minimums, they were permitted to add more residents than they were licensed for. Facilities could thus cut staff while cramming new residents into hallways and dining rooms.

The obviously damaging effects of state-endorsed staffing shortages have become even more pronounced as COVID-related research has demonstrated that lower staffing is highly correlated with COVID outbreaks and fatalities in nursing homes. Fewer staff mean the caregivers have to rush through their duties and are more apt to cut corners, including hand washing and other basic infection control measures. In addition, fewer staff means each caregiver has to attend to more residents, which contributes to increased overall neglect. As a temporary measure, the staffing waivers were dangerous - keeping them in place indefinitely is downright depraved.

According to data from AARP, only 2.6% of California nursing homes are reporting staffing shortages, the lowest in the nation. Whatever concern over labor shortages that existed in March to push CDPH to provide waivers no longer exists. Yet, the state’s policy remains stuck in the COVID dark ages and harms residents. It is time to end the staffing waivers and give residents the minimum level of care the law requires.

The early pandemic policies of suspended surveys and staffing waivers adopted in March do not make sense in December. They have evolved from questionable to dangerous and need to be revoked. We call on CDPH to end these policies immediately.
2021 Proposals: Nursing Home Reform Legislation

The COVID-19 pandemic has devastated California’s long term care facilities, causing countless preventable deaths and putting an intense spotlight on existing shortcomings in our long term care system. The statistics are staggering: while nursing home residents comprise less than one half of one percent of the total U.S. population, 26 percent of COVID-related deaths are linked to nursing homes.

With policymakers now directly confronted with the state’s failures in long term care delivery, there is a window of opportunity to address systemic problems that long pre-dated COVID. CANHR is responding to renewed calls for reform with a comprehensive list of legislative proposals, aimed at improving regulatory oversight, preventing unfit operators from acquiring facilities, enhancing resident rights, and supporting family councils. Below is a summary of CANHR’s Legislative Proposals for 2021. Please check www.canhr.org for updated details on legislation, and www.leginfo.ca.gov for information on specific bills.

1. Prohibit Unfit Operators from Owning or Operating Nursing Homes.

California nursing homes are dominated by for-profit chains that, at best, are known for putting profits over care and, at worst, for routinely exposing residents to neglect and abuse. The Department of Public Health has failed to effectively screen operators as required by law. Virtually anyone or any company can acquire nursing homes in California, no matter how terrible their track record. Legislation is needed to prevent unqualified, unsuitable and unscrupulous persons or companies from acquiring and operating nursing homes.

2. Ban on Admissions in Nursing Homes that Illegally Dump Residents

State and federal law guarantee that a hospitalized nursing home resident’s bed will be held for at least seven days. Despite the bed hold requirements, nursing facilities often refuse to permit residents to return after a brief hospital stay, even after being ordered to by the State. Legislation is needed to sufficiently penalize facilities that refuse to honor resident bed holds; e.g., facilities should be prohibited from accepting new residents until they readmit their current residents exercising their bed holds.

3. Resident Rights Enhancement

Health and Safety Code 1430 allows the Attorney General, nursing home residents, and other individuals to enforce nursing home resident rights through the courts. In 2020, the State Supreme Court decimated the private right of action by limiting the available damages to $500, regardless of the extent or number of rights violations. Legislation is needed to amend the statute to provide for damages that are proportionate to wrongdoing and restore access to justice for victims.

4. Multiple Victims, Multiple Citations

The California Department of Public Health rarely issues state citations and fines against nursing homes despite widespread noncompliance with regulatory requirements. When the Department does issue a citation, it rarely accounts for the number of victims affected by a violation. Facilities are cited and fined the same whether their conduct hurt one resident or dozens. Legislation is needed to provide proportionality so that a facility is cited and fined for each victim of its illegal conduct.
5. Family Council Support
Family councils are organized groups of relatives and friends of long term care facility residents who meet regularly to discuss and address concerns about quality of care. Family councils can be critically important to quality improvement and California has good laws to promote and protect their activities. The laws guarantee access to physical bulletin boards for displaying meeting notices and other important communication but does not account for family council communication through email. Legislation is needed to accommodate family council communication through electronic means.

6. Burden of Proof for Elder Abuse Cases
Currently, neglect in a care facility must be proven by the “clear and convincing evidence” standard, a measure of proof that exceeds other tort law areas. CANHR proposes a bill that lowers the burden of proof in elder abuse civil law from “clear and convincing evidence” to “preponderance of the evidence.” If passed, this bill would mean that cases involving abuse or neglect of elderly or dependent adults who reside in long term care facilities would be more in line with other areas of the civil suits for personal injuries.

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The evolving Coronavirus Crisis has had a worldwide impact that will take a long time to become fully understood. At the beginning of the crisis, in an effort to keep you all better informed, we created a website,

https://canhrnews.com/

specifically for COVID-19 information, news and resources related to Long Term Care. For the duration of this crisis, we are posting frequent updates there. The website contains over 840 pages, and is growing daily.

See the guide below for an overview of the many resources you can find there.
Dear Advocate:

Can Long Term Care Facility Residents Go Home for the Holidays During the Pandemic?

Sincerely,
Dreaming of Holidays with Mom

Dear Dreamer,

While recognizing they have a right to do so, public authorities are recommending that residents not leave facilities to gather together with loved ones during the public health emergency. In recent weeks, the Centers for Medicare and Medicaid Services (CMS), the California Department of Public Health (CDPH) and the California Department of Social Services (CDSS) have all issued alerts discouraging residents from participating in in-person family gatherings during the holidays.

What happens to those who leave? Authorities are urging them to minimize risks and are recommending various precautions to limit exposure to the virus. Although residents have the right to return following a holiday gathering, authorities have directed nursing homes and assisted living facilities to screen and monitor residents carefully, to test them when indicated, and, when appropriate, to quarantine returning residents for 14 days. CANHR recommends residents and their representatives speak to facility management - in advance - about any plans they have for holiday outings and seek information, preferably in writing, about the facility’s protocols for returning to the facility.

Suggested Gifts for Long Term Care Residents

It’s the holiday season again and, as you make out your shopping list, we have some suggestions for possible gifts for a special long term care resident:

- A new pair of comfortable slippers or robe in a favorite color.
- Purchase a gift certificate for a haircut, massage or manicure and pedicure. Treat yourself and go with the resident.
- Pictures taken in the last year of friends and family, arranged in an album, frame or on a bulletin board to hang up.
- Send along a calendar with important dates, such as birthdays and anniversaries. Select some cards and provide stamps for the resident to send.
- Bring a videotape/dvd to enjoy together at the facility. Record a family event, such as a baptism or a graduation for the resident to share in the celebration.
- Brighten up the resident’s room with a quilt or lap blanket. Bring in a plant or have flowers delivered on a regular basis. Check with the nursing home staff about other appropriate items, such as powder, lotion, toothpaste, soap, aftershave, etc.
- Subscribe to a hometown newspaper or a favorite magazine.
- Crossword or word search books - in large print if need be.
- A television for the resident’s room, or wireless headphones to hear the television.
- A favorite book, books on CD/tape or a wireless reading device.
- If the resident is in a wheelchair or uses a walker, find a tote bag that can attach to it.
- One of the best gifts for a nursing home resident, of course, is the gift of your visits.

Happy Holidays!

12 CANHR Advocate WINTER 2020
• August 12 & August 26: CANHR staff presented Town Halls for consumers on “Getting Good care in a Pandemic” and Pandemic Scams.”

• August 26: Prescott Cole presented a Zoom Town Hall on COVID scams targeting Seniors.

• September 8: Prescott Cole participated in the State Bar Legal Services Quarterly Coordination Conference Call.

• September 22: Pat McGinnis, CANHR’s Executive Director, spoke on a Zoom panel to the San Francisco Gray Panthers on the problems with the current model of nursing home care and how it can be changed.

• September 10, 17 & 24: CANHR staff presented a series of training for social workers and discharge planners on Medi-Cal eligibility Basics, Alternatives to Nursing Homes and Medi-Cal Recovery.

• September 29 and September 30: Staff attorneys Tony Chicotel, Mike Dark, and Jody Spiegel provided a two-part on-line training for legal services programs on fighting evictions from long term care facilities.

• October 13: CANHR staff presented a Zoom Town Hall for consumers on Resident Rights: Voting, Visitation and More.

• October 28: CANHR Staff Attorney Mike Dark gave an overview of long term care during the pandemic to the East Bay Gray Panthers.

• October 28: Tony Chicotel gave a Zoom presentation to the Institute on Aging on cognitive capacity and legal decision making.

• October 29: Prescott Cole participated in the State Bar Paraprofessional Program Working Group.

• November 5: Amber Roberts presented on Medi-Cal basics and long term care options for UCSF’s Early-Onset Alzheimer’s Disease Support Group.

• November 18: CANHR hosted a special Legal Services Zoom training as part of our annual Elder Law Conference with topics including elder financial abuse, IHSS advocacy, and eviction defense for long term care residents.

• November 19 & November 20: CANHR hosted its 24th annual Elder Law Conference via Zoom this year. While this was a new experience, it turned out to be a very exciting and productive conference, with wonderful speakers and a great group of participants.

• November 23: CANHR was asked to serve on the Community Vaccine Advisory Committee for the State of California, bringing the perspective of long term care residents to California’s efforts to develop and implement its COVID-19 vaccine distribution plan.

• December 1: Tony Chicotel participated virtually in the Orange County Council on Aging’s Health and Aging Forum. He spoke about the devastation and opportunities in long term care as a result of the COVID pandemic.

• December 3: Tony Chicotel spoke via Zoom to the Ventura County Ombudsman Program about informed consent and health care treatment.

• December 8: Prescott Cole participated in the State Bar Legal Services Quarterly Coordination Conference Call.

• December 15: Tony Chicotel spoke with Dr. Jonathan Evans at the annual Consumer Voice Conference about safety and autonomy in ethical decision making.

• December 15: Prescott Cole participated in the National Restitution Resource Committee quarterly meeting
UPDATES ON RCFE RESIDENT RIGHTS AND COVID-19

The COVID-19 pandemic has dramatically changed for the worse the lives of residents of assisted living facilities (known in California as Residential Care Facilities for the Elderly or RCFEs). Fundamental resident rights have been waived in the name of public health and safety, and agencies charged with protecting residents and enforcing laws are failing to do so. Exacerbating these problems are the ever-changing and sometimes conflicting guidance from those agencies, and the difficulty in determining which guidance is the most current.

In California, RCFEs are licensed and regulated by the Department of Social Services, Community Care Licensing Division (CCLD). Below is a summary of the most current guidance from CCLD as set forth in its Provider Information Notices (PINs) regarding several fundamental resident rights.

Visitation

On October 6, 2020, CCLD issued PIN 20-38-ASC Updated Guidance on COVID-19 and Statewide Waiver Related to Visitation, outlining the most current policies in its ever-evolving guidance on visiting RCFEs during the pandemic, and best practices for visitation. The PIN provides that RCFEs MUST allow “medically necessary visits (e.g., end-of-life).” It also provides that facilities MUST allow indoor visits when the following requirements are met: 1) No new transmissions of COVID-19 at the facility for 14 days; 2) No staff shortages; and 3) Adequate supplies of PPE and essential cleaning supplies. It further provides that facilities MUST “allow for scheduled outdoor visits on the facility premises if weather permits, and where there is 6 feet or more physical distancing, all residents and visitors wear face coverings, staff screen visitors, and staff clean and disinfect services.” Finally, the PIN provides that at all times when visitation is restricted, RCFEs MUST “allow and provide assistance in arranging for alternative communications for visitors such as phone calls, video calls and online communications.”

Advocacy Tip: If a facility is not in compliance with these visitation guidelines, CANHR recommends that residents and their families send the facility administrator a letter asking that the facility follow the law and permit, at a minimum, outdoor visitation.

Holiday Outings

Residents have the right to leave their RCFEs to celebrate with families and friends. However, due to the surge in positive cases throughout the state, residents who leave should take precautions to minimize risks and limit exposure to the virus. For safety tips and additional information, see CCLD’s PIN 20-42-ASC on COVID-19 Infection Control Guidance for Celebrations and Outings (November 20, 2020).

Residents who leave their RCFEs for holiday gatherings have the right to return to their facilities. However, CCLD requires facilities to screen and monitor returning residents carefully, to test them when indicated, and, when appropriate, to quarantine returning residents for 14 days. (PIN 20-42-ASC)

Advocacy Tip: CANHR recommends residents and their families speak to facility management - in advance - about any plans they have for holiday outings and seek information, preferably in writing, about the facility’s protocols for returning to the facility.

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Communal Dining and Group Activities

RCFEs may provide communal dining and group activities as long as they follow COVID-19 infection prevention practices. For example, residents may eat in the same room with physical distancing, e.g., a limited number of people at each table with at least six between each person. CCLD further recommends that residents wear face coverings when they are going to or from the dining room and whenever they are not eating or drinking. Group activities may take place with physical distancing among residents, appropriate hand hygiene, and use of face coverings. For more information, see PIN 20-42-ASC.

Advocacy Tip: On December 16, 2020, CCLD hosted an informational call with RCFEs regarding the importance of keeping residents socially engaged during the pandemic. (See PIN 20-44-ASC) During the call, CCL stated that it plans to issue an updated PIN on this subject soon. If a facility is not providing group dining or activities, CANHR recommends that residents and their families check the CCL website to see whether it has issued updated guidance, and send the facility administrator a letter asking that the facility permit communal dining and activities as discussed in PIN 20-42-ASC or any updated guidance.

Conflicting Orders and Guidance

If there are differing requirements between the most current federal, state and county health department guidance or health orders, CCLD advises RCFEs to follow the strictest requirements. However, it also instructs facilities to contact their Regional Office for assistance in reconciling these differences, especially if the strictest requirements appear to be in conflict with the best interest of residents. (See e.g., PIN 20-38-ASC)

Advocacy Tip: If a facility invokes federal, state or county health department guidelines to restrict resident rights, residents and their families should ask for and review the guidelines. If the facility’s interpretation of the guidelines is incorrect, or if adhering to the guidelines is causing harm to residents, residents should file a complaint with CCLD. For more information, see CANHR’s fact sheet on How to File a RCFE Complaint.

For the most current information on COVID-19 and long term care, visit CANHR’s COVID-19 News and Resources website, or contact CANHR at 800.474.1116.

Planned giving leaves a legacy to honor your memory and helps to ensure the future of CANHR.

CANHR has been a not for profit 501(c)(3) corporation since 1983. With careful planning, it is possible to reduce or eliminate income and estate taxes while turning appreciated assets into income for yourself or others.

Planned giving can include:

- gifts by will
- gifts of life insurance
- gifts by a revocable living trust or charitable remainder trust

Call the CANHR office or email patm@canhr.org to get more information and a free booklet on planned giving.
Family Councils: Making a Difference

Testing/Visitation & COVID in CCRCs

In a December 1, 2020 Provider Information Notice (PIN 20-43), Community Care Licensing provided updated guidance to RCFE licensees on testing, visitation guidelines and infection control for celebrations and outings. While we have asked repeatedly for a separate PIN for CCRC residents, once again, the guidance for those residents is included in a 10-page, confusing provider notice. Page 6 of the PIN repeats verbatim what was included in the previous notice: Independent CCRC residents are generally exempt from testing, quarantine and isolation guidelines, except when the independent CCRC resident is:

- Living with a resident who is receiving assisted living services;
- Commingling with residents who receive assisted living services or live in assisted living unit by, for example, participating in communal dining or activities or using common facility amenities;
- Presenting symptoms for COVID 19; or
- Exposed to a person who tested positive for COVID 19.

The notice goes on to include a Resident Fact Sheet and reference to the previous notice, PIN 20-42. Once again, however, the PIN does not definitively mandate that CCRC residents have independence from the restrictions of the individual facility and defers, once again, to the restrictions of the local health department. We assume that the words “generally exempt” need to be explained further. In short, then, CCRC residents are not exempt if the local health department restricts visitation. Should you have problems with visitation issues in a CCRC, please let us know.

Tamalpais Family Council – The Book

Elizabeth Phillips, Joan Hauck and Lucy Wait, residents of the Tamalpais Retirement Life Care Community, a CCRC in Marin County, started a Family Council at their community over six years ago. With over 150 members, it has grown to be the largest, most active Family Council in California, and its impact on the care and services, despite resistance from the administration, has been remarkable.

Now the “History of the Tamalpais Family Council,” a book written and edited by the Mses. Phillips, Hauck and Wait, is available on Amazon for $4.00 (free delivery if Amazon Prime member).

Their book describes the history of organizing the Tam family council, the battles waged and won, and offers some good examples of how to educate and activate residents on issues of importance to their lives. The importance of family councils cannot be overstated, as they are one of the few ways – embedded in the statutes – that family members and friends of residents and the residents themselves can make their voices heard. The statute at Health & Safety Code 1569.158 sets out the rights of the family council and the obligations of the facility. Anyone wishing to start a family council, please contact CANHR for a free video and booklet on organizing a family council and read the Tam book for a good example of advocacy by a family council.

CANHR’s instructional video for the establishment and functioning of family councils is now available for viewing on our website:

http://canhr.org/familycouncils/video/
Rate and Cost Increases Effective 1/1/2021

**2021 Social Security Rates:** See Social Security Administration website: [www.ssa.gov](http://www.ssa.gov)
There will be a 1.6% Cost of Living Increase (COLA) in 2020.

**2021 Medicare Rate Increases:** See Medicare website: [www.medicare.gov](http://www.medicare.gov)

**MEDICARE PART A**
Hospital Deductible (Day 1-60).................$1,484.00 (up from $1,408.00)

Coinsurance per day:
Day 61-90...............................................$371.00 (up from $352.00)
Day 91-150..........................................$742.00 (up from $704.00)

All cost for each day beyond 150 days.
Skilled Nursing Facility (SNF) Coinsurance....$185.50 per day for days 21-100 (up from $176)

**MEDICARE PART B**
Premium per month.................................$148.50-$504.90 (based on income)
Deductible per year..................................$203.00 (up from $198.00)

**2021 Medi-Cal Resources Rates:**
Community Spouse Resource Allowance (CSRA) ......$130,380.00
Minimum Monthly Maintenance Needs Allowance (MMMNA) ...$3,260.00
Average Private Pay Rate (APPR).................................$10,298.00 (effective January 1, 2021)

**Supplemental Security Income (SSI) & State Supplemental Program Rates (SSP):**

<table>
<thead>
<tr>
<th></th>
<th>Single</th>
<th>Couple</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aged or Disabled:</td>
<td>$954.72</td>
<td>$1,598.14</td>
</tr>
<tr>
<td>Blind:</td>
<td>$1,011.23</td>
<td>$1,751.00</td>
</tr>
<tr>
<td>One is Blind, One is Aged or Disabled</td>
<td>$1,691.65</td>
<td></td>
</tr>
</tbody>
</table>

**Rates noted are for independent living only.**

**SSI Non-Medical Board and Care Rate:**

Total Payment...............................................$1,217.37 (up from $1,206.37)
Amount Payable to RCFE for Basic Services........$1,079.37 (up from $1,069.37)
Personal and Incidental Needs Allowance..........$138 (up from $137)

**Aged and Disabled Federal Poverty Level Program - Effective 12/1/2021:**

Individual..........................................$1,468.00 (up from $1,294.00)
Couple...............................................$1,983.00 (up from $1,747.00)
A Consumer’s Guide to Financial Considerations and Medi-Cal Eligibility

This booklet outlines Medi-Cal eligibility requirements and discusses the protection of assets, such as the home and other items, when a spouse enters a nursing home.

http://canhr.org/publications/Consumer_Pubs.html
The following citation summaries are compiled from the citations issued by the California Department of Public Health to Northern California skilled nursing facilities and received by CANHR as of the publication of this issue of the Advocate. CANHR makes every effort to ensure that consumers are provided with accurate information. CANHR welcomes comments and suggestions or notice of errors. Please direct such comments to mis@canhr.org or by calling the CANHR office at (800) 474-1116. Citations without summaries will be reprinted with summaries once received by the CANHR office. Citations from earlier months are included if a description was not printed in a previous issue. Appeals of citations and collection of fines can take up to three years.

Explanation of citation classifications: “AA” citations are issued when a resident death has occurred due to nursing home regulation violations, and carry fines of up to $100,000. A class “A” citation is issued when violations present imminent danger to a resident or the substantial probability of death or serious harm, and carry a fine of up to $20,000. Class “B” citations are fined up to $2,000 and are issued for violations which have a direct or immediate relationship to health, safety, or security, but do not qualify as “A” or “AA” citations. “Willful material falsification” (WMF) violations also result in a fine. Fines are not always required to be paid. Citations can be appealed, requiring the Department of Health Services to substantiate the violation. Violations repeated within twelve months may be issued “trebled fines”— triple the normal amount.

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Santa Clara County

CUPERTINO HEALTHCARE & WELLNESS CENTER
22590 Voss Ave, Cupertino

B $1000 Infection Patient Care 7/20/20

The facility failed to timely report COVID-19 survey data on three separate occasions. This failure put residents’ health and safety at risk.

Citation # 70015930

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Gilroy Healthcare and Rehabilitation Center
8170 Murray Ave, Gilroy

B $1000 Infection Patient Care 8/10/20

The facility failed to timely report COVID-19 survey data on three separate occasions. This failure put residents’ health and safety at risk.

Citation # 70015970

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Palo Alto Sub-Acute and Rehabilitation Center
911 Bryant St, Palo Alto

B $1000 Infection Patient Care 8/27/20

The facility failed to timely report COVID-19 survey data on three separate occasions. This failure put residents’ health and safety at risk.

Citation # 70016000

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Tulare County

MERRITT MANOR CONVALESCENT HOSPITAL
604 E Merritt Ave, Tulare

A Physical Abuse 9/8/20

An 86 y/o resident with dementia was repeatedly attacked by two other residents, who also suffered from cognitive impairments. The resident was hospitalized on 10/29/19 after having sustaining scratches, skin tears to the forearm, eyebrows, and the top of his head. The facility was cited for failure to protect the resident from physical abuse when two other residents attacked him during three separate incidents.

Citation # 120015652

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Kern County

VALLEY VIEW CARE CENTER
729 Browning Rd, Delano

B $2000 Fall Injury 1/6/2020

On 8/29/19, a 68 year old male resident, with amputations on both legs below the knee, fell from his wheelchair while trying to get a cigarette from his shirt pocket. The resident had mildly impaired cognition and required supervision for smoking and assistance with going to the designated smoking area, but he was found by himself with no supervision at the time of the incident. The fall caused heavy bleeding to his left stump and was transferred to the emergency room. The facility failed to ensure that the resident had adequate supervision when smoking and while being outside in the smoking area.

Citation # 120015569

Los Angeles County

BEVERLY WEST HEALTHCARE
1020 S Fairfax Ave, Los Angeles

B $2000 Mandated Reporting Physical Abuse 10/21/2020

On Saturday 8/1/20, a resident reported to facility staff that a CNA told him to “Shut up and be quiet,” and tried to hit him. The resident felt threatened and called the police. The Registered Nurse Supervisor stated she did not know what to do for an allegation of abuse, and the Director of Nursing stated that no one called her about the incident and she did not hear about it until the following Monday. The facility was cited for failing to report an allegation of abuse to the Department of Public Health and the ombudsman within 24 hours (the allegation was not reported until two days later on 8/3/20). The facility also was cited for failing to implement its abuse prevention policies and procedures, including: immediately reporting an allegation of physical abuse to the Administrator or Director of Nursing; and suspending the CNA pending the outcome of the abuse investigation.

Citation # 920016109
A $20000 Decubiti (Bedsores)  8/27/2020

On 5/26/20, a resident died two days after being transferred to the ER and with severe malnutrition, sepsis and dehydration, and Stage IV pressure ulcers. Based on interview and record review, it was determined that the resident was at risk for dehydration, the risk for weight loss, and required extensive assistance with eating because of swallowing difficulty. During the RN interview, it was apparent that the nursing staff wasn’t measuring the resident’s fluids intake and output, and there wasn’t proper monitoring of the resident’s condition. The facility was cited for failure to provide the necessary care and services for the resident.

Citation # 920015999

B $20000 Infection Patient Care  8/21/20

The facility failed to separate COVID-19 positive residents from the residents who had tested negative. This failure resulted in 45 residents testing positive for COVID-19.

Citation # 950015987

A $20000 Evictions  10/13/2020

A resident with severe mental health problems was sent to an unlicensed boarding home on 11/14/29 with no plan in place for maintaining and monitoring his Clozaril prescription. Clozaril requires extensive blood testing and many pharmacies are unable to fill a prescription for it. The unlicensed facility did not provide any medication management. Within weeks, the resident’s condition deteriorated and he stopped speaking and began eating his own feces. He developed sepsis, had to be hospitalized and died on 12/16/19. The physician who cleared the resident for discharge stated “it’s not my fault, it’s the nursing home’s fault. I’m very busy seeing patients at the hospital. I don’t know if I wrote progress notes. I don’t participate in discharge meetings.” The resident’s family described the resident as a loving person who overcame tremendous challenges, became a licensed nurse, and aspired to become an addiction counselor. The facility was cited for failing to: 1) ensure the resident’s physician was appropriately involved in supervising the resident’s care; 2) set up a safe transition to a discharge location; and 3) ensure the resident’s medical needs would be met after discharge.

Citation # 920016087
Montrose Springs Skilled Nursing & Wellness Center
2635 Honolulu Ave, Montrose

B $2000 Infection Patient Care 9/18/2019

On 7/9/20, the facility was cited for failing to implement interventions to prevent and control the spread of COVID for eight residents by failing to: Cohort four residents who tested positive for COVID 19 from four residents who tested negative for COVID 19; hire a full time Infection Prevention Nurse to monitor, prevent and control the spread of COVID 19 in the facility; ensure the phlebotomist wore a gown when she collected bodily fluid specimens from residents with COVID 19, and removed her soiled gloves before entering the area in which residents without COVID 19 resided; ensure a resident who tested positive for COVID 19 wore a mask while sharing the same room with two residents who both tested negative for COVID 19; and ensure the area housing residents with COVID 19 had designated restroom, breakroom for staff who take care of COVID 19 positive residents, and placed signage to remind staff to wash their hands, and to don and doff PPE before and after providing care to the residents.

Citation # 950016040

Two Palms Nursing Center
2637 E Washington Blvd, Pasadena

B $2000 Patient Rights 7/17/2020

On 4/10/20 the resident was transferred from Vernon Healthcare Center to a general acute care hospital for evaluation and treatment of a fever. On admission to the acute hospital, the resident was determined to be without fever and the general acute hospital attempted to have the resident admitted to the nursing facility. The facility refused to admit the resident.

Citation # 910015940

Orange County

Healthcare Center of Orange County
9021 Knott Ave, Buena Park

B $2000 Evictions 8/26/2020

Two residents were dumped by the facility into unlicensed boarding homes that were completely unequipped to provide the care they needed. The first resident, who was conserved and determined by a judge to be gravely disabled, was sent to an unlicensed home on 2/18/20. The home did not provide the services the resident needed. Neither the resident nor her conservator were told of the discharge in advance. She left the unlicensed home unnoticed and was missing for six days and then again left unnoticed and was missing as of the date of the state’s investigation. The second resident, who used a wheelchair and had extensive care needs, was sent to an unlicensed home that did not have wheelchair access. She was then sent to a second unlicensed home which did not accept her and she was abandoned in the front yard and found crying and scared. She was eventually sent to the hospital. The facility was cited for dumping residents into inappropriate locations and failing to give discharge notice to the residents, their surrogates, and the Long term care Ombudsman program.

Citation #60015990
This booklet outlines the applicable rules of the Medi-Cal Recovery laws before and after January 1, 2017. It has been revised to provide additional information on Medi-Cal recovery laws effective for individuals who die on or after January 1, 2017.

We revised the booklet again in June 2019 with the latest applicable information, which is still current as of September 2020. You can order printed copies of the updated version, or download it for free as a PDF document at:

http://canhr.org/publications/Consumer_Pubs.html
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THANK YOU FOR ALL YOUR SUPPORT IN 2020