Shopping for Long Term Care in 2021 - It’s Different Now

The impact of COVID-19 on long term care was devastating and will last for years. The pandemic exposed longstanding problems in the long term care system including poor infection control, chronic understaffing, and the inherent dangerousness of the institutional model of care that dominates the nursing home industry and a significant portion of assisted living care.

With the arrival of the COVID vaccine and plummeting rates of community infection and death, long term care facilities have settled into an uneasy recovery. Far fewer facility residents and staff members are getting or dying from COVID-19 but many government-imposed preventive measures remain in place. Staff and residents are still largely required to wear masks and socially distance when they interact and visitation access is often substantially restricted. Occupancy rates (the number of residents living in facilities), which plunged to historic lows as consumers avoided congregate settings, are starting to rebound somewhat.

As we settle into this new slow and uneasy recovery phase of the COVID-19 pandemic, the time is ripe to reassess the experience of seeking long term care. What should consumers and their families be thinking about as they enter into the world of formalized long term care?

Consideration #1: Is there any way you can stay home?

Generally speaking, most folks who need long term care are going to be better off receiving care at home than they will be in a facility, assuming sufficient care can be provided at home. This was true prior to the pandemic and it is even more true today. Consumers and their families should look at maximizing informal care delivered by friends and family members and adding in-home care or adult day care as needed. Take a look at CANHR’s community based care fact sheet for more information about home care options. The best way to avoid abuse or neglect in a facility is by staying out of a facility!

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CANHR News

CANHR’s Prescott to Retire/Amber Moves On

CANHR is very sad to announce the retirement of Prescott Cole, CANHR’s Senior Staff Attorney, who has been with CANHR since September 1995. Over the course of his long career with CANHR, Prescott was responsible for many legislative protections against elder financial and institutional abuse and the resurgence of CANHR’s elder abuse panels. He was also the recipient of numerous awards and recognitions, including his selection by California Lawyer Magazine as a 2010 Clay Award winner and Elder Law Attorney of the Year. His contributions to CANHR’s advocacy and to the many victims of elder abuse will never be forgotten. A musician, playwright and avid hiker, Prescott is not likely to be bored in his new-found free time. But he leaves a hole at CANHR that will be hard to fill.

Amber Roberts, CANHR Advocate, is also leaving in June and moving to San Diego to be closer to her family and to pursue her education. Amber has been an ultimate advocate and will be sorely missed.

CANHR Is Moving

After seventeen years at 650 Harrison Street in San Francisco, CANHR is moving to a new home in Berkeley in August 2021. Our current location in the South of Market, a major attraction for new development, has been sold, and we were fortunate to find a suitable location at the Berkeley site. Our phones and emails will remain the same. Our new address: CANHR, 1803 6th Street, Berkeley, CA 94710.

Visitation Saves Lives Campaign

CANHR has been working with other advocacy groups to lobby the state and federal governments to open up nursing homes to visitation. See News & Alerts on our Visitation Saves Lives website for the latest guidance on visitation.

Leave a Legacy

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.

Donate to CANHR

CANHR’s funding has significantly dropped as a result of the pandemic. A donation – however large or small - can make a difference in our advocacy. Please donate to CANHR.

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About CANHR

Since 1983, California Advocates for Nursing Home Reform (CANHR), a statewide nonprofit 501(c)(3) advocacy organization, has been dedicated to improving the choices, care and quality of life for California’s long term care consumers.

CANHR

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[continued from page 1]

We understand that not all long term care consumers are going to be able to get the care they need at home. But everyone should make sure that they have exhausted all of the possible in-home care options before they agree to a facility placement. Home and community based care options are often underexplored despite their significant benefits to consumers.

Consideration #2: Is this place any good?

If a consumer cannot muster or afford enough care to remain in their home and must look at a facility-based setting, CANHR has guidance for selecting assisted living facilities and for selecting nursing homes. The cost of facility-based care, as well as a facility’s location and track record, are critical considerations for most consumers. CANHR always recommends personally visiting any facility before agreeing to move there, and being very observant of the care being provided and the experience of the current residents. Visiting facilities may be challenging due to COVID restrictions but shoppers can seek video visits as well as engage management and staff in robust conversations about facility practices, followed up by written confirmation of any promises the facility has made.

While COVID was a horrible wave of woe for long term care facilities, their experience during the pandemic provides some very useful data points for potential residents. Several studies, including a recent study authored in part by officials from the Centers for Medicare and Medicaid Services (CMS), have shown that facilities with the worst COVID outbreaks were generally facilities with poor quality and low staffing. Consumers can review every California nursing home’s COVID data (e.g. the number of residents infected) by reviewing the state Department of Public Health’s data dashboard. Assisted living facility data can be viewed on the Department of Social Services data report webpage.

CMS also posts facility-specific COVID data although the data set can be challenging to read. The CMS site includes data on facility capacity and occupancy, self-reported staff or PPE shortages, and now has vaccination rates for staff and residents.

Unfortunately, vaccination rates in assisted living facilities are not publicly reported but consumers should be sure to confirm their rates while shopping for a facility. Consumers should be sure to use vaccination information to make better decisions about COVID safety in the facilities they are considering.

Consideration #3: Can my family visit me?

Despite plummeting rates of COVID infections and deaths in nursing homes and the lifting of public health-oriented restrictions throughout the state, the State’s waiver of nursing home and assisted living residents’ normally robust rights to visitation, remains stuck in the pre-vaccination era. Facilities throughout the state have been given the greenlight to limit visits from families and friends to 30 minutes per week. The good news is that facilities are also permitted to offer 24-hour per day visitation. The difference in facilities’ visitation policies is now a matter of choice by their management team. Facilities with robust visitation policies have prioritized visitation more than those with restrictive policies.

Consumers are strongly encouraged to speak with the managers of facilities they are considering and ask for written copies of their visitation policies. Facilities that are not willing to share their policies in writing or those that have restrictive policies should be avoided.

Facility One permits family visits 24 hours a day, though they need to be scheduled in advance and basic COVID precautions must be exercised. Facility Two limits each resident’s visits to one 30 minute visit per week. All other things being equal, DON’T GO TO FACILITY TWO. Facility Two’s regressive visitation policy is not only detrimental to resident well-being, it is reflective of a facility culture that tolerates isolation and restriction. Good long term care facilities thrive on a culture of openness and accommodation to make residents happy.

[continued on next page]
Exercising the power to choose!

Long term care consumers are often made to feel as if they have no choice in selecting their providers. Hospital patients who need therapy and recovery time are often shuttled to nursing homes without being given a reasonable review of in-home care options or the chance to select a nursing home. Long term care is typically critical to the quality of life for its consumers - don’t accept care from bad providers or those with bad policies. If someone is proposing care be provided from a bad provider, JUST SAY NO. If someone is proposing care from a provider you have not yet carefully vetted, JUST SAY NO. Selecting a long term care provider is like any other health care decision; it requires the informed consent of the patient. Exercise your right to choose your health care provider and your right to choose where you go. Exercise your market power to choose the long term care provider and situation that is best for you!

Review - An Updated and Very Brief Checklist for Long Term Care Facility Shopping:

Review facility profile on Cal Health Find or the DSS Facility Search.

Check the facility COVID data (see above).

Ask for the facility’s visitation policies, in writing.

Review the facility’s staffing levels (for nursing homes only).

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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.
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.
Advocacy Groups Call for CMS to Fully Restore Visitation Rights for Nursing Home Residents

CANHR, along with several other advocacy organizations, recently wrote to the Centers of Medicaid and Medicare Services (CMS) asking it to fully restore visitation rights for nursing home residents. After almost a year and a half of severe isolation from families and friends; and inordinate number of deaths of nursing home residents due to such isolation; the sharp reduction in deaths due to COVID; and the high number of vaccinated residents, it’s time to open the doors!

Sufficient Staffing is the Prescription to Prevent Dangerous Nursing Home Conditions Exposed by the Pandemic

What policies can best protect nursing home residents now and in the future from the overwhelming infection and death rates seen during the pandemic? That question is the subject of a thought-provoking June 2021 commentary by Professor Charlene Harrington of UCSF and other nursing home experts that was published by the HSOA Journal of Gerontology and Geriatric Medicine: Time to Ensure Sufficient Nursing Home Staffing and Eliminate Inequities in Care.

While the paper focuses on lessons learned during the pandemic, it is grounded in a superb analysis of the nursing home industry and the nation’s longtime failure to ensure nursing homes are safely staffed. Its message to all is that now is the time to mandate safe staffing in our nation’s nursing homes.

Federal Legislation Introduced to End Pre-Dispute Arbitration Agreements

CANHR has joined with numerous consumer advocacy groups in support of the “Fairness in Nursing Home Arbitration Act” (H.R. 2812), introduced by Reps. Linda Sanchez and Jan Schakowsky. This critical legislation would prohibit long-term care facilities from requiring or soliciting residents, their families, or their guardians to enter mandatory, pre-dispute, binding arbitration agreements.

Forced arbitration agreements pressure consumers into agreeing to terms that may have a substantial adverse impact on their rights, safety, and health. They also reduce incentives for facilities to improve their quality of care. After a year in which nearly 322,000 nursing home residents died of COVID-19, and countless others suffered from isolation and neglect, enacting additional safeguards for residents is imperative.

State and Counties Sue Mariner Nursing Home Chain for Fraud, Understaffing, and Resident Dumping

On April 8, 2021, the California Attorney General and a group of District Attorneys filed a lawsuit alleging that Mariner Health Care Inc. – which runs 19 nursing homes in California – systematically broke laws and harmed patients “all to generate increased profits at the expense of resident care.

The Mariner action follows a civil lawsuit filed against one of its facilities and a similar lawsuit filed by the Attorney General and District Attorneys against the Brookdale nursing home chain.

The lawsuit against Mariner alleges the chain:

- failed to maintain sufficient staffing to meet the state minimums and the needs of its residents leading to poor wound care, pressure ulcers, lice, scabies, and sexual assaults;
- illegally dumped residents with Medi-Cal coverage in favor of more highly reimbursed residents with Medicare coverage; and
- falsified resident information reported to the government to fraudulently obtain a higher federal 5-star rating.

The Mariner and Brookdale lawsuits represent a new approach to nursing home enforcement in California, led by consumer advocates in the Attorney General’s office and in District Attorneys’ and City Attorneys’ offices around the state. These resident champions are thankfully filling some of the void left by the weak enforcement efforts of our state Department of Public Health.

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U.S. Department of Justice Files Suit Against Nursing Home Chain for Allegedly Paying Illegal Kickbacks to Physicians

The federal government also sued a California nursing home chain that has often been in the news during the pandemic. On June 15, 2021, the U.S. Department of Justice (DOJ) announced it has filed a False Claims Act lawsuit against Paksn Inc., Prema Thekke (one of its owners), and seven skilled nursing facilities it owns or operates. The United States alleges that the defendants hired physicians who promised to refer a large number of patients to the skilled nursing facilities, a practice it describes as turning patients into commodities that can be traded.

KPBS Reports the California Department of Public Health is Still Considering Changing the Watchdog Role of Nursing Home Inspectors

A June 2, 2021 story by KPBS reports that the California Department of Public Health (CDPH) has not given up on its highly controversial plan to turn nursing home inspectors into consultants to operators. While the misguided plan has temporarily been put on hold, CDPH states it is still under consideration and nursing home industry members continue to embrace it. Initially called “Adopt-a-SNF,” the plan was renamed and modified several times as detailed in CANHR’s October 5, 2020 letter urging CDPH to withdraw it. The plan’s existence is a testament to the nursing home industry’s firm grip on CDPH. CANHR will continue to monitor developments.

HHS Office of Inspector General (OIG) Finds California Failed to Ensure Nursing Facilities Reported Abuse and Neglect

A June 2021 report by OIG is the latest in a long string of studies that have found California has failed to properly protect nursing home residents. This study looked at hospital records of nursing home residents who were transferred to hospital emergency rooms to assess whether nursing homes had reported potential abuse and neglect. In a concerning number of cases, it found that they did not, such as in the case of a resident who had been repeatedly assaulted by another resident.

Additionally, OIG found that California nursing homes sometimes filed late reports on abuse and neglect and that facility documentation was often inadequate to determine whether abuse or neglect occurred. Furthermore, CDPH did not properly prioritize half of the reported cases in the study sample that required investigation.

SSP & CAPI Grants

The Golden State Grant for SSI recipients, which was included in the state’s recent pandemic relief bill, is now going out. The Golden State Grant provides a one-time $600 state supplementary payment (SSP) grant to SSI seniors and people with disabilities. It also provides a one-time $600 grant for individuals who receive Cash Assistance Program for Immigrants (CAPI), a state-funded program for certain immigrants who are not eligible for SSI due to 1996 federal welfare legislation that restricted eligibility for non-citizens.

Paper checks are being mailed to SSI/SSP and CAPI recipients starting the week of May 24th, based on zip code. Learn more in this explainer from Californians for SSI.

For SSI/SSP recipients:

- The payment will not count as income and will not reduce your regular SSI check.
- The payment will start counting toward the $2,000/$3,000 resource limit the month after you receive the check. If the payment puts you over the $2,000/$3,000 resource limit you may want to consider spending enough money to get below those limits.

For CAPI recipients, the rules are somewhat different. The payment will not count as income and will not reduce your regular CAPI check, and it will also not count as a resource for the 12 months following. After the 12-month exclusion period, it will start counting toward the $2,000/$3,000 resource limit. The state has set up a call center to answer questions about the payments to SSI/SSP and CAPI recipients. You can reach the call center at 1-866-312-3100.

FAQs and webpage about the payment for SSI/SSP recipients

FAQs and webpage about the payment for CAPI recipients
Federal Antipsychotic Quality Measure is Unreliable

A May 2021 Issue Brief by the Office of the Inspector General (OIG) of the U.S. Department of Health and Human Services concludes that antipsychotic drug data used by the Centers for Medicare and Medicaid Services (CMS) is inaccurate, hampered by fraud, and gives a misleading impression of chemical restraint use in nursing homes.

Since 2012, CMS has used data that is self-reported by nursing homes to compile an antipsychotic drug “quality measure.” The idea of the quality measure is to report the percentage of residents receiving an antipsychotic drug at least once a week, excluding “appropriate” drug uses, which includes treating schizophrenia, Huntington’s disease, and Tourette’s syndrome. The self-reported data purports to show that inappropriate antipsychotic use has declined by 41% since 2011.

The OIG report criticizes CMS for relying exclusively on facility self-reported data. Facilities often misreport data, either by error or for their own self-interest, i.e., to make themselves look good. OIG cross-checked self-reported facility data with residents’ Medicare prescription drug claims and found two significant accuracy problems. The first accuracy problem is that many residents (over 12,000!) received an antipsychotic drug according to their Medicare claims but the facility did not report the drug use to CMS. The second accuracy problem is that many residents (over 29,000!) were reported to have schizophrenia but their Medicare claims indicated they did not. In other words, nursing homes are hiding their antipsychotic drug use by making up phony schizophrenia diagnoses. Much of the concerns about CMS’s antipsychotic quality measure was previously identified by CANHR.

The recommendations made by the OIG are sensible: CMS should obtain more data about antipsychotic use, like drug brand, dosage, and duration of use, to get a more complete picture of antipsychotics in nursing homes. The OIG also recommended CMS supplement facilities’ self-reported data with data from other sources, such as the Medicare claims data.

CMS’s response to the OIG findings were tone deaf. While acknowledging the wisdom of improving the accuracy of the data, CMS touted the same unreliable data to brag about the reduction in nursing home antipsychotic drug rates. When it comes to reducing antipsychotic drug use in nursing homes, CMS is trumpeting success that it knows has not really been achieved. Despite all of CMS’s self-reported efforts, 20% of all nursing home residents still receive an antipsychotic drug and the vast majority of those residents are receiving them inappropriately.

Family Councils: Making a Difference

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/
Dear Advocate:

Both my parents are World War II veterans. My dad has Parkinson’s and my mom is in the beginning stages of Alzheimer’s. I’ve been caring for both of them at home, 24 hours a day, 7 days a week, for two years. I’m exhausted! and I don’t know what to do anymore. Is there any help for me from the VA? I don’t want to put them in a home, but I don’t think I can do this much longer without a break.

Respite Needed NOW

Dear Respite Needed:

Your parents would likely qualify for some VA home care benefits. The Veteran’s Affairs (VA) has a “VA Caregiver Support” Program. Their helpline operates Monday-Friday 8am-11pm ET and Saturday 10:30am-6:00 ET. The helpline offers information about services available to your parents from the VA, such as VA Aid and Attendance benefits that can help pay for home care. They can also put you in contact with a Caregiver Support Coordinator. The VA’s Caregiver Support Line’s toll free phone number is 1-855-260-3274 or visit them on the web at: http://www.caregiver.va.gov/

Did You Know?

Medi-Cal offers alternatives to nursing homes that also allow the community spouse to keep extra assets and income. Home and Community Based Services (HCBS) are designed for seniors who want to stay at home or within their community and who are at high risk for nursing home placement. Under California law, Spousal Impoverishment protections allow the spouse of the HCBS beneficiary to retain assets, i.e., a community resource allowance (CSRA) of up to $130,380 and income – a maximum monthly maintenance needs allowance (MMMNA) of $3,260. These amounts are adjusted annually by a cost-of-living increase.

When one spouse in a married couple applies for Medi-Cal and indicates on the application that they would like to apply for HCBS, spousal impoverishment protections will be applied upon approval into the program. The HCBS program must work concurrently with the Medi-Cal eligibility worker during the application process to ensure spousal impoverishment is applied.

These programs can be a great alternative to institutionalization and allow access to some couples who would not otherwise be eligible for “community-based” Medi-Cal because of strict asset and income limits; however, the areas of service available are limited by county and sometimes by zip code, and some programs may have waiting lists of up to two years.

To find out more about the program works see our factsheet: http://canhr.org/factsheets/medi-cal_fs/PDFs/FS_Spousal_Impoverishment_HCBS.pdf
CANHR On The Move

- 3/2/2021: Prescott Cole taught a class on Long-Term Care Medi-Cal at UC Hastings’s Law School Medical-Legal Partnership for Seniors.

- 3/4/2021: Prescott Cole presented a program on financial elder abuse on KALW “Your Legal Rights”.

- 4/7/2021: CANHR Staff Attorney Tony Chicotel teamed up with Dr. Jonathan Evans to make a presentation to the U.S. Department of Health and Human Services’ Elder Justice Working Group. The presentation was about health care decision making for people with cognitive disabilities.

- 4/14/2021: Tony Chicotel and Dr. Evans reprised their presentation on health care decision making and cognitive capacity, this time for legal services staff.


- 4/19/2021: Prescott Cole taught a class on The Misuse of Reverse Mortgages for UC Hastings’s Law School Medical-Legal Partnership for Seniors.

- 4/21/2021: Prescott Cole presented a Webinar on Reverse Mortgages and the PACE Solar Program to Legal Services Organizations.

- 4/22/2021: Tony Chicotel trained the staff and volunteers of the Ventura County Ombudsman program on advocacy strategies for nursing home residents who have received a discharge notice.

- 4/29/2021: Tony Chicotel was interviewed for At Home with Growing Old about why nursing homes are so scary.

- 4/30/2021: Tony Chicotel spoke with a consortium of disability rights advocates about the COVID-19 vaccine experience in long term care facilities.

- 5/7/2021: Prescott Cole made a presentation the Fundamental of Financial Elder Abuse to TEXCOM Section of the State Bar.

- 5/21/2021: Tony Chicotel and CANHR LRS Advisory Councilmember Peter Stern provided an estate and incapacity planning training to Inland Counties Legal Services.


- 6/22/2021: Julie Pollock provided a social worker training on Medi-Cal’s Spousal Impoverishment Rules for Community-Based Care.
CANHR was one of the honorees at a “kansha obon”, a Buddhist ceremony of gratitude, hosted by Reverend Fray Fukumoto of the Rissho Kosei-Kai Buddhist Church in the Boyle Heights neighborhood in Los Angeles. The event, organized by community advocacy group Save our Seniors and the Family Council of the Sakura Gardens ICF, served to recognize and appreciate “heroes” and “heroines” working to help residents of the Sakura Gardens ICF facing eviction from the facility, and included the presentation of a certificate of appreciation from the office of Kevin De Leon, Council Member for the City of Los Angeles’ 14th District.

CANHR has stood shoulder-to-shoulder with residents of the ICF and their families, helping organize a family council as well as advocacy efforts to challenge the facility’s closure plan and eviction notices. Under the proposed plan, the facility’s new owner, Pacifica Companies, proposes to move the elderly and disabled residents of the ICF to a nursing home that saw one of the worst COVID outbreaks in the State to make room for new condominium developments. Mike Dark, CANHR Staff attorney, who has worked tirelessly for the family and resident groups, was on hand to accept the certificate.

For more information regarding the plight of Sakura ICF residents and other long term care residents facing eviction during the pandemic, please contact CANHR staff attorney Mike Dark.
CANHR has supported, opposed, and/or closely followed the below pieces of legislation this session. Please check www.canhrlegislation.com for updated details on legislation, and www.leginfo.ca.gov for information on specific bills.

**SPONSOR**

**AB 279 (Muratsuchi): Prohibiting Resident Eviction During the Pandemic**
Many residents of California skilled nursing facilities (“SNFs”) and Intermediate Care Facilities (“ICFs”) face a terrible prospect in the ongoing COVID pandemic: involuntary transfer to new facilities, sight unseen, far from their families and support networks. AB 279 would prohibit the owner of an ICF or SNF from ceasing to deliver or making significant changes to residential care services, or from transferring a resident to another facility, during any declared state of emergency relating to the coronavirus disease 2019 (COVID-19), except if the owner files for bankruptcy. The bill’s protections would expire six months after the cessation of states of emergency, to permit residents and their families to assess new facilities if their current homes are going to close.

**Status:** Hearing in Senate Appropriations on 7/15/21

**SB 650 (Stern): Skilled Nursing Facility Transparency and Accountability**
Californians are paying more for nursing home care, for fewer residents, than ever before and we are not getting our money’s worth. Despite spending nearly six billion dollars a year, complaints against facilities are at record highs and the care provided is often abysmal. Nursing homes are using complex ownership structures to siphon unprecedented amounts of money to “related parties,” allowing corporate home offices to hide their profits and support facilities’ claims for yet more public money. SB 650 requires nursing homes to file annual consolidated financial statements, giving the State and the public more transparency for nursing home payments. The public has the right to know how much of its money is supporting nursing home residents versus how much is being spent on the lifestyles of billionaire nursing homes owners.

**Status:** Hearing in Assembly Health Committee on 7/13/21

**SUPPORT**

**AB 323 (Kalra): Long-Term Health Facilities**
This bill enhances the state nursing home enforcement system by: 1) increasing the penalties for state citations issued against nursing homes to keep up with inflation and 2) updating the criteria for AA citations (those that cause the death of a resident) from the old “direct proximate cause of death” standard to the more clear “substantial factor” standard used by courts.

**Status:** Hearing in Senate Judiciary Committee on 7/13/21

**AB 470 (Carrillo): Medi-Cal Asset Test**
This bill would eliminate the Medi-Cal asset test.

**Status:** Passed Senate Health and referred to Appropriations

**AB 636 (Maienschein): Financial Abuse of Elder or Dependent Adults**
This bill would authorize information relevant to the incident of elder or dependent adult abuse to be given to a federal law enforcement agency.

**Status:** Passed Senate Judiciary and referred to Appropriations
AB 665 (Garcia): Residential Care Facilities for the Elderly: Resident Rights: Internet Access  
This bill would amend the rights of residents of RCFEs, in those facilities with existing internet service, to add the right to have available at least one internet access tool with videoconference technology as part of the facility’s activity program.  
Status: Hearing in Senate Human Services Committee on 7/6/21

AB 749 (Nazarian): Skilled nursing facilities: medical director certification  
This bill would prohibit a skilled nursing facility from contracting with a medical director if the person is not, or will not be within 5 years, certified by the American Board of Post-Acute and Long-Term Care Medicine as a Certified Medical Director.  
Status: Hearing in Senate Appropriations Committee on 7/5/21

AB 849 (Reyes/Stern): Restoring the Enforcement of Nursing Home Resident Rights  
Since 1982, California nursing home residents have had a “private right of action” (the ability to sue) for violations of their rights. Last year, the state Supreme Court ruled that nursing homes that violate the rights of residents may only be held liable for $500 maximum, regardless of how many rights a facility violates and how egregious those violations are. Nursing homes now routinely infringe multiple rights of residents and simply send the victims $500 checks as a license to violate. Poor care is officially profitable. AB 849 will restore facility liability to up to $500 per violation, so that offending facilities have to answer for every breach of resident rights it commits.  
Status: Passed Senate Judiciary and ordered to 3rd Reading

AB 1042 (Jones Sawyer): Related Party Accountability  
Nursing homes investors are increasingly setting up “related party” businesses to avoid accountability and hide profits. AB 1042 would help counter that trend by establishing shared standards and liability for entities that have shared ownership and control. Specifically, the bill would make related parties liable for a nursing home’s unpaid State fees and fines.  
Status: Passed Senate Health and Referred to Appropriations

SB 56 (Durazo): Medi-Cal Eligibility  
This bill would extend eligibility for full-scope Medi-Cal benefits to undocumented individuals who are 65 or older.  
Status: Passed Assembly Health and referred to Appropriations

SB 281 (Dodd): California Community Transitions Program  
This bill would make the California Community Care Transitions Program permanent, and reduce the time needed for an applicant to be considered “institutionalized” to 60 days spent in a Skilled Nursing Facility.  
Status: Referred to Assembly Health Committee

SB 460 (Pan): Office of Patient Representative  
This bill was ordered to the inactive file, but provisions were included in budget trailer bill language. The provisions would create the Office of the Patient Representative to train and oversee patient representatives to protect the rights of nursing home residents who allegedly lack capacity to make decisions and have no surrogate decisionmaker available.  
Status: Ordered to inactive file

SB 447 (Laird): Civil Actions: Decedent’s Cause of Action  
This bill would permit damages for a decedent’s pain, suffering, or disfigurement to be recovered in an action brought by the decedent’s personal representative or successor in interest.  
Status: Passed Assembly Banking & Finance and referred to Appropriations
SB 648 (Hurtado): Care Facilities
This bill was ordered to the inactive file, but the provisions were included in budget trailer bill language. The provisions would create a pilot program to permit certain adult residential facilities (ARFs) and residential care facilities for the elderly (RCFEs) to be eligible to receive a stipend of $1,000 per month per resident on SSI.
Status: Ordered to the inactive file.

SB 664 (Allen) Hospice Licensure: Moratorium on New Licenses
This bill would impose a temporary moratorium on the issuance of new licenses to provide hospice services.
Status: Hearing in Assembly Health Committee on 7/6/21

OPPOSE

AB 499 (Rubio): Referral Source for Residential Care Facilities for the Elderly
This bill would require an RCFE referral agency to provide certain disclosures to seniors, and to maintain a minimum amount of liability coverage, but does not provide oversight or sufficient enforcement mechanisms.
Status: Hearing in Senate Judiciary Committee on 7/13/21

CANHR Senior Staff Attorney Prescott Cole and his family at his retirement party. We’ll miss Prescott and we wish him all the best in his well-earned retirement!
RCFE Corner: Resident Rights

In 2014, CANHR sponsored landmark legislation (AB 2171, Wieckowski) which created a statutory comprehensive bill of rights for RCFE residents. The rights became effective on January 1, 2015, but the regulations implementing the rights did not become effective until October 1, 2018.

The majority of RCFE resident rights are now set forth in California Health & Safety Code (HSC) section 1569.269 and California Code of Regulations (CCR), Title 22, sections 87468-87468.2. Below are descriptions of a few resident rights, and related practice tips.

**RESIDENT RECORDS RIGHTS**

RCFE records and personal information are confidential, and cannot be released without resident approval. [HSC 1569.269(a)(3); 22 CCR 87468.2(a)(2)] However, residents have the right to review their own records and purchase photocopies. [HSC 1569.269(a)(21); 22 CCR 87468.2(a)(19)] With respect to timing, the facility must provide prompt access to the records, and copies within two business days. With respect to cost, the facility can charge for copying the records, but cannot charge more than the “community standard.” The community standard is not defined, but should not exceed 25 cents per page for paper copies or 50 cents per page for records copied from microfilm as that is the cap for health care providers. [HSC 123110(j)(2)]

**TIP:** To avoid paying copying costs to the RCFE, consider taking photographs with a phone or digital camera, or bringing in a copying machine to the facility.

**ROOM & ROOMMATE RIGHTS**

RCFE residents have the right to reasonable accommodation of their preferences concerning rooms and roommates, including the right to share a room with their spouse, domestic partner or person of their choice. [HSC 1569.269(a)(17), (19); 22 CCR 87468.2(a)(15), (17)] For transgender residents, the facility must assign rooms according to the resident’s gender identity.

If an RCFE wants to make any room changes, it must give at least 30 days advance written notice, unless the change is agreed to by the resident, required to fill a vacant bed, or necessary due to an emergency. [HSC 1569.269(a)(18); 22 CCR 87468.2(a)(16)]

**TIP:** Refuse to move if the facility wants to put you into a less desirable room. Refusing a room change is not one of the five legal reasons for eviction.

**RIGHT TO REFUSE MEDICAL CARE OR OTHER SERVICES**

RCFE residents are entitled to fully participate in planning their care, and must be provided with sufficient information and support to make informed decisions and choices. [HSC 1569.269(a)(9); 22 CCR 87468.2(a)(7).] A resident’s right to make choices about care includes the right to receive or reject medical care or other services. [22 CCR 87468.1(a)(16).] For example, an RCFE resident is entitled to receive or reject assistance with personal care, or assistance with the self-administration of medications.

**TIP:** If an RCFE recommends a service that you do not wish to receive, such as a “higher level of care,” advise the facility in writing that you do not want the service. Do not pay for any services that you have refused.

**RIGHT TO NOTICE OF RETENTION LIMITATIONS**

RCFEs are required to disclose in writing, at or before the time of admission, any limitations or restrictions on their ability to meet residents’ needs. [HSC 1569.269(a)(15); 22 CCR 87468.2(a)(13).] For example, if an RCFE does not have a hoyer lift or cannot provide one on one supervision, it would need to disclose this information to residents in its admission agreement or other pre-admission documents.

**TIP:** If an RCFE tells a resident that he/she must leave because it is not able to provide a particular service, check to see whether the admission agreement or another document states that the RCFE cannot provide that service. If it does not, challenge the RCFE’s refusal to provide the service.

[continued on next page]
RCFE Corner: Resident Rights

POST-DEATH REFUNDS ARE REQUIRED

A RCFE must include in the admission agreement its policy concerning refunds, including the conditions under which a refund for advanced monthly fees will be returned in the event of a resident’s death. [HSC 1569.884(h); 22 CCR 87507(g)(5)(A)] RCFEs are prohibited from imposing charges after the death of a resident, beginning on the date after the resident’s personal property has been removed from the living unit. [HSC 1569.652(a)] The facility must refund any fees paid in advance to the individual’s contractually responsible for paying the fees or, if the resident paid the fees, to the resident’s estate. The fees must be refunded within 15 days after the resident’s personal property has been removed. [HSC 1569.652(c)]

TIP: Check the admission agreement to see whether the facility charges fees after a resident’s death, and the amount of those fees. If the agreement requires payment of fees after a resident’s death, remove the resident’s personal property as soon as possible to maximize the amount of the refund.

RECIPIENTS OF SUPPLEMENTAL SECURITY INCOME (SSI) CAN PAY REDUCED RATE

SSI is a program funded by federal and state governments that pays a minimum monthly income to individuals who are aged (65+), blind or disabled, and have limited income (<$1,217.37 per month as of 1/1/21) and resources (<$2,000 in countable assets). If a RCFE resident receives SSI, California law limits the monthly rate that the facility may charge the SSI recipient for “basic services.” [22 CCR 87464(e)] Note, “Basic Services” are defined very broadly in 22 CCR 87101(b)(2). Under 2021 SSI payment rates, RCFE residents who are SSI beneficiaries will receive payments to ensure their income is $1,217.37 per month, and must pay the RCFE $1,079.37 per month. This leaves the resident with $138 per month for personal needs ($1,217.37 - $1,079.37 = $138). Additionally, California law prohibits a facility from requiring a resident to waive his/her right to receive SSI benefits in its Admission Agreement. [HSC 1569.269(c); 22 CCR 87468.2(c)]


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
CANHR welcomes memorial and honorary gifts. This is a great way to honor a special person or a loved one, while helping those who are long term care residents. Recent gifts have been made in the names of the following persons:

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Erik Paesel  

Yong Cha Pak  
Michelle Stassi  

Julie Fudge  
Kimmel D. Fudge  

David V. Olmsted  
David Olmsted  

Mort Cohen  
CANHR Staff  

**IN MEMORY OF**

Aunt Jan  
Jenny Lanning  

Geneva Morse  
David Morse  

Yong Cha Pak  
Samantha Barnes  

Yong Cha Pak  
Rochelle Wedge  

Donna & Tom Ambrogi  
Pat McGinnis  

Reba Sepulveda  
Solyra Sepulveda  

Betty Giebelhouse  
Jeannie Baier  

Ingo Orlamunder  
Geraldine Murphy  

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 March 2021. 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
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.

Solano County

LAUREL CREEK HEALTH CENTER
2800 Estates Dr, Fairfield

A $20,000 Injury; Neglect; Patient Care 1/15/2021

On 6/7/19, a resident was crying and reportedly complained to staff about a 9/10 pain in her knee. Five LVNs became aware of a resident’s but failed to report this to the primary physician. These five nurses did not follow the facility policy for reporting the change of condition, did not follow their job description, and did not practice according to professional standards. These failures caused the resident to suffer from severe pain and crying, restricted movement, swelling, and discoloration of her left knee. At the same time, staff continued to manipulate the left knee (with turning, positioning Resident 1 onto a bedpan, and moving her in or out of bed). Seventy-two hours after Resident 1’s initial complaint, during the primary care physician’s regular rounds on 06/10/19, an X-ray was ordered. The X-ray confirmed a fracture of the left knee on 06/11/19. The facility was cited for the failure of five Licensed Nurses to recognize and address the resident’s severe pain.

Citation # 110016125
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.

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Los Angeles County

Avalon Villa Care Center
12029 Avalon Blvd, Los Angeles

A $20000 Fall 3/24/2021
On 10/28/20, a totally dependent resident at high risk for falls and required extensive assistance with mobility fell while being transferred from the bed to a wheelchair. The attempted transfer was a one-person physical assist with the use of a gait belt. The resident became unsteady during the transfer and ended up on the floor sustaining a left femoral fracture. The resident underwent surgical repair of the fracture and was hospitalized for nine days. The facility was cited for failing to properly use a gait belt when transferring a resident and failing to follow the proper protocols to minimize the risk of falls or accidents.
Citation # 910016373

Live Oak Rehabilitation Center
537 W Live Oak St, San Gabriel

B $2000 Infection 2/12/2021
The facility failed to provide sufficient nursing staff in order to provide infection control. Three residents had a change of condition, and the facility failed to put this in the residents’ medical records, these three residents later died. The facility’s failures had a direct relationships to the health and safety of the residents.
Citation # 950016285

Lakeview Terrace
831 S Lake Street, Los Angeles

B $2000 Administration; Infection 3/4/2021
On 1/7/21, the facility impeded an investigation on infection control practices at the facility by failing to allow the Department investigator to access the video footage from the facility’s patio and rehabilitation room. This resulted in an incomplete investigation to verify COVID-19 protocol adherence was in place during an alleged Christmas party held on 12/18/20 in the facility’s rehabilitation room and patio. The Administrator verified a ceremony took place. Multiple residents expressed concern that the party might have caused the increased COVID-19 cases in the facility among residents and staff. Two CNAs who attended the party stated and confirmed that they tested positive for COVID-19 on 12/23/20. A resident who observed the party stated he saw 30-40 people under the tent placed in front of the rehabilitation room. The facility’s Infection Preventionist stated that 27 staff members and 37 residents tested positive for COVID-19 from 12-18-20 to 1/7/21. The Administrator stated the video surveillance was for risk management purposes and was not for distribution, so the Department could not access it. As a result, the investigation was not completed with review of all relevant records, in violation of the Health and Safety Code.
Citation # 920016323
**LANDMARK MEDICAL CENTER**

2030 N Garey Ave, Pomona

**B** $2000  Mandated Reporting; Patient Care; Sexual Abuse  4/29/2021

On 1/5/21, a CNA found a 24 year old male resident by the bed of a 40 year old female resident. The female resident was lying on her bed with her pants halfway down exposing her buttocks. The CNA escorted the male resident out of the room, but did not report the incident to a supervisor or the Administrator. The State Agency was not notified until the following day. The facility was cited for not timely reporting the attempted sexual abuse of a resident to the State Survey agency within two hours.

Citation # 950016453

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**MESA GLEN CARE CENTER**

638 E Colorado Ave, Glendora

**A** $100 000  4/23/2021

On 1/7/21 at 12:48 pm, a resident was observed as non-verbal, refusing to eat, and difficulty waking up. The RN in charge did not inform the doctor of a change in condition because the resident had normal vital signs, and he thought the resident might have been ‘faking it.’ The RN did not ask any other staff to find out the resident’s baseline mental status. At 5:00 PM, an LVN was informed that the resident was showing signs and symptoms of having a stroke. The LVN did not call the doctor because only Nurse supervisors could call doctors. Instead, the LVN called an NR supervisor who was at home. While waiting for the RN to return to the facility, the resident’s vital signs dropped. At 5:30 pm, the paramedics were called, and they arrived at 5:58 PM, where they found the resident unconscious. The resident was admitted to the ICU for a stroke. She stayed at the hospital for eight days then went back to the facility, where she died on 1/17/21. The facility was cited for delayed emergency care and services for the treatment of stroke.

Citation # 950016441

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**MIRADA HILLS REHABILITATION AND CONVALESCENT HOSPITAL**

12200 La Mirada Blvd, La Mirada

**WMF** $1000  Medication; Patient Records; Staffing  12/11/20

Eleven residents’ clinical records were willfully falsified by licensed nurses documenting that medications were given by them and assessments were performed by them during the 7 PM to 7 AM shift on the COVID-19 unit at the facility. Upon investigation of a complaint that the facility did not have licensed staff and that CNAs were observed passing medications, the Administrator disclosed staffing problems during COVID outbreaks at the facility from 6/20 to 7/20 and 8/20 to 9/20. The Administrator stated the facility’s nursing staff was depleted and the nurses who were available refused to work on the COVID unit. According to the Administrator, several nurses who refused to work on the COVID unit signed they had administered medication to residents on the 7 PM to 7 AM shift during this period. Three CNAs admitted they administered medications to the residents, per instructions from the licensed nursing staff. These violations had the potential for residents to receive the wrong medications, to suffer adverse consequences and for their drugs to be diverted.

Citation # 910016194

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**MIRADA HILLS REHABILITATION AND CONVALESCENT HOSPITAL**

12200 La Mirada Blvd, La Mirada

**A** $20000  Infection; Neglect; Staffing; Death  3/5/21

On 12/9/20, a 68 year old resident died from pneumonia and Covid-19 at the understaffed facility. On the night of his death, a single nurse cared for 22 residents on the yellow zone (suspected Covid-19) unit where he resided. The nurse stated she was unable to conduct assessments or provide any other care to residents due to not having any staff help. A CNA reported that the facility had been short of staff for a few weeks, especially on the night shift. The resident experienced a change of condition that worsened during the night, when he suffered respiratory distress and decreased oxygen saturation. He died at about 3:40 AM. The facility’s failures to ensure sufficient staffing, provide necessary care and treatment, continually assess the resident’s worsening condition and transfer the resident to the hospital resulted in delays to his assessment, care and treatment.

Citation # 910016326
**B $2000 Medication 12/11/20**

Eleven residents were given medications, including narcotics, by unauthorized, unlicensed facility personnel. Controlled medications were not reconciled or secured and residents were not monitored or assessed as per the physician’s orders. Upon investigation of a complaint that the facility did not have licensed staff and that CNAs were observed passing medications, the Administrator disclosed staffing problems at the facility during Covid outbreaks at the facility from June to July 2020 and August to September 2020. The Administrator stated the facility’s nursing staff was depleted and the nurses who were available refused to work on the Covid unit. According to the Administrator, several nurses who refused to work on the Covid unit signed they had administered medication to residents on the 7 p.m. to 7 a.m. shift during this period. Three CNAs admitted they administered medications to the residents, per instructions from the licensed nursing staff. The facility was cited for failing to ensure residents’ medication was administered to residents on the 7 p.m. to 7 a.m. shift during this period. These violations were found to be a direct proximate cause of the resident’s death.

Citation # 910016193

**AA $100 000 Infection; Neglect; Staffing; Death 3/5/21**

On 12/9/20, a 60 year old resident who had Down’s syndrome died following neglect at the understaffed facility. On the night of his death, a single nurse cared for 22 residents on the yellow zone (suspected Covid-19) unit where he resided. The nurse stated she was unable to conduct assessments or provide any other care to residents due to not having any staff help. Another staff member reported that the facility had been short of staff for a few weeks, especially on the night shift. After a lack of care due to insufficient staffing, the resident experienced a change of condition that worsened during the night, when he suffered respiratory distress, decreased oxygen saturation and a high fever.

Paramedics were summoned, witnessed the resident in full arrest, and transferred him to the emergency room, where he was pronounced dead at 3:12 AM, shortly after his arrival. The resident’s diagnosis, care and treatment were delayed by the facility’s failures to notify a physician of his change of condition, to continually assess his worsening condition and to ensure sufficient staffing to provide necessary care. These violations were found to be a direct proximate cause of the resident’s death.

Citation # 910016327

**AA $100 000 Neglect; Staffing; Death 3/5/21**

A 60 year old resident who was ventilator dependent died on 1/5/21 - about 14 hours after he was admitted to the facility’s sub-acute unit - when his tracheostomy tube became dislodged and a respiratory therapist was unable to reinsert it, resulting in the resident being unable to breathe. A number of facility failures preceded his death. Upon admission at 7:50 pm on 1/4/21, a nurse observed that the resident was really anxious, moving around in bed, pointing at his tracheostomy and the ventilator machine, attempting to communicate by mouthing words. Another nurse observed that the resident didn’t seem stable. Yet his respiratory status was not assessed. The sub-acute unit was short-staffed. No RN worked the night shift from 9 pm to 7:15 am that night, although one was needed 24 hours a day. A doctor who was ill ordered a nurse to find another physician to take over the resident’s care but the order was not followed. There were unresolved communication barriers. The resident only spoke Cantonese. He spoke, gestured and attempted to communicate but the staff were unable to understand his needs. The staff tried to communicate in English, but the resident could not understand. The facility failed to communicate with the resident in his language. The resident’s tracheostomy tube was found dislodged at 8:30 am and a respiratory therapist unsuccessfully attempted to reinsert it. She stated at the time she was not trained on how to reinsert a tracheostomy tube when the tube was accidentally dislodged. 911 was called when the resident started to desaturate. On 1/5/21, paramedics arrived at the facility and pronounced the resident dead at 9:23 am. The violations were a direct proximate cause of the resident’s death.

Citation # 950016328
**PARK AVENUE HEALTHCARE & WELLNESS CENTER**  
1550 N Park Ave, Pomona

**B  $2000 Administration; Infection 3/5/21**  
The facility failed to follow an 11/24/20 Health Officer Order to discontinue admissions due to a COVID-19 outbreak at the facility. Eighteen residents were admitted from 12/30/20 through 1/4/21 while the order was still in effect. The facility’s Infection Preventionist nurse stated the facility received the letter indicating the facility was closed to admissions. This deficient practice had a direct or immediate relationship to the health, safety or security of these residents.

Citation # 950016325

**PARK AVENUE HEALTHCARE & WELLNESS CENTER**  
1550 N Park Ave, Pomona

**B  $2000 Administration; Infection; Patient Care 3/5/21**  
An investigation initiated on 1/7/21 found that the facility failed to implement interventions to prevent and control the spread of COVID-19 in accordance with local Public Health guidelines, facility policies and its Mitigation Plan. The facility failed to: ensure 131 staff members that work directly with residents were fit tested for the correct N95 facemasks and provided the appropriate size of N95 facemasks as required by OSHA and CDPH standards; obtain COVID test results for 16 newly admitted residents and to retest residents; ensure two residents who were receiving hemodialysis treatment outside of the facility were placed in the Yellow Zone; ensure Transportation Team Members were screened for COVID-19 symptoms and exposure; designate a full-time Infection Prevention Nurse while the main Infection Prevention Nurse was off work from 12/21/20 to 1/4/21; ensure the Administrator submitted the COVID-19 test results for all residents and staff to the local Public Health Nurse; and ensure the Administrator informed a nurse and respiratory therapist of their positive COVID-19 test results immediately so they could start to self-quarantine. These deficient practices had the potential to spread COVID-19 from residents to other residents and staff in the facility and could lead to severe respiratory illness, hospitalization and/or death.

Citation # 950016324

**THE ROWLAND**  
330 W Rowland St, Covina

**B  $2000 Careplan; Deterioration; Dietary Services; Feeding; Neglect; Nutrition; Patient Care 11/12/2020**  
On 1/20/20, a 90 year old resident was readmitted to the facility with diagnoses including Alzheimer’s disease, tailbone pressure ulcer and urinary retention. Her nutritional care plan indicated alteration in nutritional status related to variable meal intake, and the goal was for her to have no more than 5% weight loss in three months. Within 5 months, the resident lost 32 lbs. and was at risk for delayed healing of her pressure ulcer. The facility was cited for failing to provide acceptable quality and quantity of nutrition to meet the resident’s recommended daily nutritional intake and prevent weight loss by failing to ensure: 1) Resident received prescribed diet with correct portion size as ordered by the physician; 2) Resident received food and beverages prescribed by the Registered Dietician; and 3) Resident received G-tube placement as ordered and arranged by the physician to prevent further decline in her nutritional status.

Citation # 950016146
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