A BIG Year for Nursing Home Reform in the State Capitol

Thanks to the work of legislative champions in the Capitol and throughout the state, the narrative of death and despair in nursing homes during the COVID-19 pandemic has been recast with the passage of several new laws that will improve nursing home care. Five bills were recently signed into law and, coupled with two nursing home budget items passed in July, turned 2021 into a momentous year for nursing home reform.

PROTECT Act - Five Bills Signed into Law

Early in 2021, seven bills were introduced in the state legislature, aimed squarely at the poor conditions in nursing homes exposed during the pandemic. These bills were collectively known as the Prioritize Responsible Ownership, Treatment, Equity, and Corporate Transparency (PROTECT) Act.

One of the most notable of the bills, AB 1502 (Muratsuchi), addressing nursing home ownership suitability and the operations of facilities by entities without licenses, was quickly shelved and made into a two-year bill. Another PROTECT Act bill, AB 279 (Muratsuchi), to establish a limited moratorium on resident transfers during the COVID-19 state of emergency, was sadly vetoed. The remaining five bills, however, were signed into law and promise to enhance nursing home financial transparency, accountability, and care for all residents:

1. SB 650 (Stern). Requires nursing homes to submit CPA reviewed consolidated financial reports so the public can see how much of its tax dollars are being spent on care for residents and how much is being spent on “related party” businesses the nursing home owns or controls.

2. AB 323 (Kalra): Nursing Home Citations. Provides a long-overdue inflationary boost to nursing home citation penalties and updates the criteria for AA citations (those that cause the death of a resident) from the old “direct proximate cause of death” standard to the clearer “substantial factor” standard.

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CANHR News

CANHR Staff Changes

CANHR welcomes Alice Dueker, a new CANHR staff attorney. Alice, who taught at U.C. Hastings and has practiced estate planning for a number of years, is a Berkeley resident and will join us in our new Berkeley office. CANHR also welcomes Schnita McGee, our new receptionist/AA, and Jaclyn Flores, MSW, who will join our Advocacy Unit in November.

Our New Office

CANHR has moved to our new offices at 1803 6th Street in Berkeley. Boxes still need to be unpacked and we are trying to sort through years of files. While CANHR’s staff is alternating coming into the office in the interest of safety and working remotely part of the time, we are definitely working hard. Our phones are up and running, and we are responding to calls and email inquiries as soon as possible. If our phones are busy or off, you can always email us at canhrmail@canhr.org. We always respond as soon as possible.

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 maura@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.

CANHR Advocate

FALL 2021
A BIG Year for Nursing Home Reform in the State Capitol

[continued from page 1]

3. AB 749 (Nazarian): Certification of Nursing Home Medical Directors. Requires nursing home medical directors to be certified by the American Board of Post-Acute and Long-Term Care Medicine within five years of their hiring.

4. AB 849 (Gómez Reyes): Nursing Home Resident Rights. Restores facility liability to up to $500 for each violation of a resident’s rights, undoing last year’s awful Jarman v. HCR Manorcare decision, which held that nursing homes could violate as many resident rights as it wants for $500.

5. AB 1042 (Jones Sawyer): Related Party Accountability. Establishes shared liability for entities that share ownership or control of nursing homes. Related parties will be liable for unpaid state fines and fees.

Nursing Home Reform in the Budget

The state’s 2021-22 budget included two important pieces dealing with nursing homes. The first, in response to a lawsuit filed by CANHR and two former nursing home residents in 2013, resets the law regarding decisionmaking for “unrepresented” residents. Unrepresented residents are those who have diminished decisionmaking capacity and lack a surrogate decisionmaker. For nearly thirty years, these residents were essentially at the mercy of nursing home staff members to decide what care they would receive or not receive, including the withdrawal of life sustaining treatment. With the new law however, a patient representative, unaffiliated with the nursing home, must be part of the resident’s decisionmaking team. Four million dollars was allocated in the budget to form a Long-Term Care Patient Representative Program to train, certify, and supervise public patient representatives throughout the state, likely provided by county or local non-profit agencies.

The second new nursing home law included in the budget creates a system, administered by the Department of Health Care Services (DHCS), for assessing fines against nursing homes that have unlawfully evicted residents and refused to readmit them, despite having been ordered to by DHCS. Facilities who engage in such reprehensible practices will now be subject to a $750/day fine for up to 100 days. While the new fine will not end resident dumping, it will likely help prevent some cases, assuming DHCS actually assesses and collects the fines.

What Does it All Mean?

With the dust now having settled on a wild legislative ride in 2021, California has better laws to protect nursing home residents. For the first time in many years, the legislature addressed long standing problems in nursing homes - problems that had contributed to unfathomable sickness, isolation, and death in facilities during the pandemic. A broad range of concerns were given attention, from nursing home finance and accountability to resident discharges and due process. The new laws will improve the quality of care provided in nursing homes.

Perhaps even more important for nursing home reform than the bills themselves is the fact that a group of legislators collaborated and committed to creating better policies to protect and enhance the quality of life for residents supported by grassroots resident advocates. Senator Stern and Assemblymembers Muratsuchi, Jones-Sawyer, Kalra, Nazarian, and Gómez Reyes demonstrated firm resolve pursuing their legislation, often in the face of strong industry opposition determined to maintain the status quo. These legislators thankfully recognized the status quo too often led to miserable resident experiences. We now have multiple real nursing home reform champions in the Capitol and momentum for the future.

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

2021 began with nursing home residents enduring horrific suffering from the most deadly COVID-19 surge of the pandemic. The subsequent legislation introduced and passed reflected the urgency of the situation and the resolve of our legislators. However, the groundwork of activists and legislative supporters around the state proved critical for the development of the legislation and ultimately to its success. CANHR members and allies responded to our calls for help, sending support letters, calling their legislative members, and testifying at hearings. A tremendous number of organizations contributed mightily to the statewide reform effort. Special thanks go to SEIU California, AARP, Gray Panthers, and Geriatric Circle for their tremendous partnership in 2021 and to all of the reform supporters for their time and energy. Our state policies are now more protective of residents because of you. The fight for better care continues apace, however, and CANHR will continue working hard to advance residents’ interests. Here’s to better days for long term care consumers in 2022!

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 maura@canhr.org to get more information and a free booklet on planned giving.

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.

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/
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.
Nursing Home Oversight, or Lack Thereof, Called Out by Legislature

The Assembly Health Committee held an informational hearing on nursing home oversight on October 5. Several critical topics for nursing home residents were explored, from ownership and California’s zombie licensing system to the Department of Public Health’s weak enforcement and oversight. Long story short, DPH is not doing its job and its failures contribute to resident harm and misery.

You can watch the entire four hour hearing here. Or you can watch attorney Kim Valentine’s testimony on behalf of the Consumer Attorneys of California or CANHR senior staff attorney Tony Chicotel’s testimony separately.

CalMatters (State health department blasted over nursing home oversight) and LAist (Nursing Homes in Dire Need of Regulation After Thousands Die From COVID-19, State Lawmakers Say) both published good summaries of the hearing.

Los Angeles County Office of Inspector General Issues Final Report on Skilled Nursing Facility Oversight and Accountability

On October 12, the Los Angeles County Office of Inspector General (OIG) issued a voluminous final report – Improving Oversight and Accountability Within Skilled Nursing Facilities – of a more than year-long investigation triggered by the devastating death toll in LA County nursing homes during the pandemic and the horrific history of neglect in these facilities that goes back decades. The final report tells the story of life-threatening conditions in some nursing homes and inhumane conditions in others, dysfunctional oversight, complaint investigations being closed prematurely, failure to make required elder abuse referrals, improper backdating of records, complex chain ownership structures and ineffective penalties.

Some of its 39 recommendations are: establishing a permanent Skilled Nursing Facility Task Force; supporting safe staffing requirements; creating a comprehensive county-wide SNF crisis mitigation and response plan; and revising its Health Facility Inspection Division’s mission statement to prioritize resident health and safety above all else and to commit to transparency, accountability and public engagement. Notably, it also urges the County to support passage of AB 1502 (Muratsuchi), the CANHR-sponsored nursing home ownership reform bill, and to explore setting up its own system to thoroughly screen nursing home owners.

Elder Abuse Lawsuit Filed Against “Unlicensed Owner-Operator” of Nursing Home

An October 4, 2021 article by CalMatters reports that the state’s largest nursing home owner, Shlomo Rechnitz, is facing a lawsuit alleging that one of his homes, the Windsor Redding Care Center, is responsible for the COVID-related deaths of elderly and dependent residents. According to the article, family members of residents who died as a result of a COVID-19 outbreak are suing the facility for elder neglect and abuse, alleging that the facility forced employees to come into work while symptomatic with the virus, triggering the outbreak. The lawsuit describes Rechnitz and his management companies as an “unlicensed owner-operator” who had been denied a license to operate the facility by the California Department of Public Health.

CMS Trashes State Abandonment of Dumped Residents

In a major development for CANHR’s six-year effort to force the State of California to enforce its own orders requiring nursing homes to readmit unlawfully evicted residents, the federal Centers for Medicare and Medicaid Services (CMS) has opined that California’s position in the case is mistaken.

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In 2015, fed up with an eviction hearing system that gave residents paper victories but not justice, CANHR and three residents who had been illegally dumped into hospitals sued the State arguing that its hearing system was a sham. In the subsequent years of litigating the case, state officials have spent enormous amounts of time and money to defend its abandonment of illegally evicted residents.

Recently, the judge in the case asked CMS for its opinion on the merits of the State’s arguments. In response, CMS explained that “CMS has repeatedly informed California that [CMS] does not believe the state’s procedures comply with [federal law].” CMS also wrote that California’s legal arguments do “not align with the requirements of the statute and its implementing regulations.” In other words, the State is not fulfilling its legal requirement to enforce hearing decisions and its legal arguments are wrong.

That’s what we’ve been telling the State for years.

Enforcing orders requiring nursing homes to readmit illegally evicted residents is not only a lawful imperative, it is a moral imperative. The State shamefully continues to waste taxpayer dollars and state resources on fighting to maintain its rotten abandonment of dumped nursing homes residents. We hope that CMS’s opinion will finally convince the State to do its job.

The information is intended to help people make informed decisions when choosing a nursing home.

CMS is updating the data weekly. Medicare and Medi-Cal certified nursing homes have been required to report weekly COVID-19 vaccination data for both residents and staff since May, and CMS has been posting the information on the CMS COVID-19 Nursing Home Data website. The new vaccination rate tool on Care Compare is in addition to the data being posted on the COVID-19 Nursing Home Data website.

**CANHR joins with Justice in Aging and LGBTQ Senior Organizations to submit an amicus brief to the California Supreme Court, asking the court to review a Court of Appeal decision that invalidated the “pronoun provision” of the LGBT Long Term Care Facility Residents Bill of Rights. The brief supports the argument of the Attorney General and joins other amici in requesting review of the lower court decision.**

The brief we signed argues that the Court of Appeal mischaracterized the pronoun provision. This provision makes it unlawful for a long-term care facility staff member to “[w]illingly and repeatedly fail to use a resident’s preferred name or pronouns after being clearly informed of the preferred name or pronouns,” and the brief argues that other settings where deliberate misuse of pronouns has been found to be discriminatory support the enforcement of the statute. The particular circumstances of LGBTQ seniors make protection of their rights vital, since they may have more limited choices about how to receive necessary care because they are less likely than non-LGBTQ seniors to have children or other family members available to provide in-home care. Obtaining assistance should not require giving up the right to be treated with respect.

**Vaccination Rates for Nursing Home Staff and Residents Now Available on Care Compare**

The Centers for Medicare & Medicaid Services (CMS) announced in a September 21, 2021 press release that it has added a new feature to its Care Compare website to make it easier to check COVID-19 vaccination rates for nursing home staff and residents. The information is intended to help people make informed decisions when choosing a nursing home. To access the vaccination rate data, search a nursing home’s zip code or city on Care Compare, click on the name of the nursing home, then scroll down to click “View COVID-19 Vaccination Rates” to see the data.
New York Times Calls Out Resident Drugging Hidden by Phony Diagnoses

A New York Times story has called out the growing use of fake schizophrenia diagnoses in nursing homes. These fake diagnoses conceal the drugging of residents from the public via a shoddy “quality measure” used in the CMS 5-star ratings system. Incredibly, doctors are not making antipsychotic prescriptions to suit a diagnosis, they are making diagnoses to suit a prescription.

The perverse incentives that drive this fantasy medicine are described in the story and have been a concern for several years. Nonetheless, policymakers continue to do nothing and instead enable overdrugging by continuing to find thousands and thousands of instances of drug misuse to be “no harm.”

How the lifting of the public health emergency may affect your Medi-Cal benefits

The Department of Health Care Services (DHCS) is working with Stakeholders to best prepare for transition after the end of the state COVID-19 Public Health Emergency (PHE). While local Medi-Cal offices have started to send out some redetermination paperwork to beneficiaries, they will not take any steps to terminate Medi-Cal benefits, or take any other negative actions, such as increases to the Share of Cost, until the end of the PHE.

CMS has also authorized counties to begin processing cases in which a change in circumstance would not result in a negative change to benefits, or would result in a positive change, until the end of the PHE. Examples of a change in circumstances can include, income changes, property changes, and long-term care transitions. Please note: Under the federal COVID-19 rules, beneficiaries currently have 210 days to file a state fair hearing. The extended fair hearing period will continue to be applied until the end of the COVID-19 PHE. For more information visit the Medi-Cal guidance ACWDL 21-16 https://www.dhcs.ca.gov/services/medi-cal/eligibility/letters/Documents/21-16.pdf

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
My father lives in a nursing home and recently became eligible for Medi-Cal. We received the statement from Medi-Cal and it says his share of cost is more than he makes each month. How can that be possible?

Sincerely,
Short-changed in Shasta County

Dear Advocate:

My father lives in a nursing home and recently became eligible for Medi-Cal. We received the statement from Medi-Cal and it says his share of cost is more than he makes each month. How can that be possible?

Sincerely,
Short-changed in Shasta County

Dear Short-changed:

Share of Cost for Medi-Cal is calculated using your gross income – before taxes are withdrawn. This is why your father’s Share of Cost ends up being more than his net income, which is the actual income received every month. Rather than trying to change the Share of Cost, you need to increase your father’s net income so that you can pay his Medi-Cal Share of Cost. You can do this by stopping the withholding of taxes from his income. In order to do so, fill out Form W-4P (“Withholding Certificate for Pension or Annuity Payments,” [https://www.irs.gov/pub/irs-pdf/fw4p.pdf](https://www.irs.gov/pub/irs-pdf/fw4p.pdf)). To stop state taxes from being withheld, contact your father’s pension plan and request a “California State Income Tax Withholding Election Form.” Once these deductions are stopped, the problem with counting income that you don’t actually receive should be fixed. At the end of the year, most, if not all, of your father’s long term care expenses are deductible.

Did You Know?

The California Community Transitions (CCT) Project helps nursing home residents, who are able to live independently, transition back to the community. Nursing home residents who are on Medi-Cal and who have continuously resided in a nursing facility for 60 days can contact their local CCT Lead Organization to begin the process.

The CCT Lead Organization will hire transition coordinators to work directly with individuals, support networks and providers to facilitate and monitor the participant’s transition to the community setting of their choice. The participant receives a comprehensive plan that allows them to live in their own home, apartment or community care facility and receive long term care services, such as In-Home Supportive Services (IHSS) or other home and community-based services. CCT covers household set-up costs, home modifications, vehicle adaptations and assistive services to ease the transition for the participant.

Upon transitioning to the community, the transition coordinator will hold a demonstration period of 365 days to address the needs of the participant post-transition. The participant can continue to receive their long term care services if they remain eligible for Medi-Cal after the demonstration period.

For more information, contact your local lead organization: CA Community Transitions Lead Organizations or email California. [CommunityTransitions@dhcs.ca.gov](mailto:CommunityTransitions@dhcs.ca.gov)
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: Vetoed by Gov. Newsom

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: Signed by Gov. Newsom

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: Signed by Gov. Newsom

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: Signed by Gov. Newsom
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: Signed by Gov. Newsom

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: Signed by Gov. Newsom

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: Signed by Gov. Newsom

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: Signed by Gov. Newsom

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: Signed by Gov. Newsom
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: Signed by Gov. Newsom

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: Ordered to inactive file

OPPOSE

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 October 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
Vaccine Mandates for RCFE Workers

Following a state and federal requirement for nursing home staff to be vaccinated for COVID-19, the California Department of Public Health issued a second order covering staff of adult and senior care homes, including Residential Care Facilities for the Elderly (RCFEs). The order requires all staff, outside care providers, and other workers who come into the facility to be fully vaccinated by November 30. The Department of Social Services issued a notice to adult and senior care homes, letting them know about the new mandate.

The order requires that all workers in facilities have their first dose of a one-dose regimen or their second dose of a two-dose regimen by November 30, 2021. However, workers may submit a request for exemption from the vaccination requirements for religious or qualified medical reasons. If granted an exemption, unvaccinated workers in long term care settings will be required to submit proof of a negative COVID-19 test once a week, and wear a mask at all times while within the facility. Administrators are required to maintain records of workers’ vaccination or exemption status, and for unvaccinated workers with an exemption, keep copies of all testing results.

For information on COVID-19 positive staff and resident cases at Adult and Residential Care Facilities for the Elderly, the California Department of Social Services provides a cumulative report on its website. Visit [https://www.cdss.ca.gov/inforesources/research-and-data](https://www.cdss.ca.gov/inforesources/research-and-data) and click on “COVID-19 Positive Cases in Adult and Senior Care Facilities.”

Right to Leave During COVID

Typically, RCFE residents are allowed to leave their facility to visit family or go out in the community. However, based on local county ordinances related to the pandemic, there may be restrictions or limitations to prevent the spread of infection. It is possible the facility may also impose testing requirements upon return, require a quarantine, or discourage residents from travelling in the community, so as to limit infection spread within the home.

Visitation Lockouts During COVID

Despite the ongoing pandemic, in-person visitation is mandatory in California long term care facilities, including RCFEs and CCRCs, which are licensed as RCFEs. However, some facilities are shutting down all in-person visitation indefinitely when a staff member or resident tests positive for COVID-19. Generally, these visitation lockouts are illegal. The only time a facility may temporarily shut down in-person visitation is when a local public health authority has directed that visitation be stopped.

CANHR has reviewed the various federal and California guidance regarding visitation in long term care facilities and synthesized the rules into a new fact sheet to guide residents and their families. The fact sheet highlights the types of visitation RCFEs must provide, and under what conditions, as well as the infection control protocols facilities may impose during visits. It is important to note that the rules outlined apply, regardless of COVID outbreaks in a facility. To download a copy of the guide visit: [http://canhr.org/factsheets/covid_fs/PDFs/fs_visitation.pdf](http://canhr.org/factsheets/covid_fs/PDFs/fs_visitation.pdf)

If you or your loved one’s facility is prohibiting visitors due to an outbreak, or for any other reason, ask the facility management what rules they are following that permit the lockout and provide the facility with CANHR’s Visitation Rights fact sheet. If the facility persists in an unauthorized lockout, file a complaint with Community Care Licensing and convey the urgency of the complaint and the need for immediate investigation. If CCL is not able to restore visitation rights after a complaint has been raised, please contact CANHR.
Every CCRC in California must be licensed as a Residential Care Facility for the Elderly (RCFE) by the Department of Social Services, Community Care Licensing. If the CCRC operates a skilled nursing home, the SNF must be licensed by the Department of Public Health, Licensing and Certification. The CCRC contracts must be approved by the DSS, Continuing Care Retirement Branch. Thus, the statutes and regulations applicable to RCFEs, with the exception of the contractual provisions, are applicable to CCRCs. This includes the right to form independent resident and family councils and other residents rights included in California State laws and regulations. The Continuing Care Contract Statutes can be found at Health & Safety Chapter 10, Division 2. For a copy of the RCFE rights, see CANHR’s fact sheet: http://www.canhr.org/factsheets/rcfe_fs/PDFs/FS_RCFE_ResidentRightsOutline.pdf

If there are differing requirements between the most current CDC, CDPH, CDSS, CDDS, Cal/OSHA, and local health department guidance or health orders, **licensees should follow the strictest requirements.** However, there may be times where a licensee will need 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. Ask for a copy of the requirements the facility is attempting to impose and file a complaint with the DSS, CCL regional office.

For information on COVID-19 positive staff and resident cases at Adult and Residential Care Facilities for the Elderly, the California Department of Social Services provides a cumulative report on its website. Visit https://www.cdss.ca.gov/inforeresources/research-and-data and click on “COVID-19 Positive Cases in Adult and Senior Care Facilities.”

**CCRCs and Applicable State Laws and Regulations**

The State of California has taken an important step to safeguard the wellbeing of residents of long term care and adult and senior facilities by mandating that virtually all facilities providing care in congregate settings take steps to ensure that their workers are vaccinated.

In a Public Health Order issued September 28, 2021, the State mandates that all workers who provide services or work in Adult and Senior care facilities licensed by the Department of Social Services must have the first dose of a one-dose regimen or the second dose of a two-dose regimen by November 30, 2021. The order also applies to in-home direct care service workers, IHSS providers, all waiver personal care providers and hospice workers who are providing services in the home or in a licensed facility, as well as all Regional Center employees. Religious and medical exemptions are included in the order, but those with exemptions must be tested weekly. The Order took effect immediately and providers much be in full compliance by November 30, 2021. A similar order has been issued for all skilled nursing facilities in California. For RCFEs, the September 28 order. For nursing homes, the August 5 order.

**Visitation/Right to Leave Restrictions in CCRCs**

CANHR has had numerous inquiries as to what visitation and other requirements can be imposed on residents of CCRC independent living units. Note that the Department of Social Services has issued PIN 21-40 to clarify that such restrictions can only be imposed under specific circumstances. *Visitation restrictions pursuant to PIN 21-17.2-ASC shall only be imposed on an independent CCRC resident when the resident is living with someone who is receiving assisted living services; or when the independent CCRC resident is commingling with residents who receive assisted living services or live in assisted living units by, for example, participating in communal dining or activities or using common facility amenities. PIN 21-40-ACS*

If none of these situations are applicable, the facility is not complying with the state’s directives. Independent residents should not have to quarantine or have restrictions on visitation if they are not commingling with assisted living or SNF residents, using common facility amenities and are living independently in their own units. (See RCFE Corner in this issue for a link to CANHR’s fact sheet on visitation.)

• 7/14/2021: Senior Staff Attorney Tony Chicotel was interviewed for the Consumer Voice’s Pursuing Quality Long Term Care podcast on “When a Loved One is Called a ‘Bad Fit’”.

• 7/21/2021: Tony Chicotel and Mike Dark hosted a virtual townhall meeting about the state of visitation rights in long term care facilities.

• 8/10/2021: Mike Dark and Pauline Shatara made a presentation on Nursing Home Issues, Home & Community Based services and Resident’s Rights to Ashby Village.

• 9/8/2021: Tony Chicotel participated in a press briefing called “Follow the Money” hosted by SEIU California to expose the various games nursing home owners play to enrich themselves with taxpayer money.

• 9/9/2021: Pauline Shatara and Maura Gibney made a presentation to the Contra Costa Advisory Council on Aging on Evaluating Nursing Home Care.

• 9/16/2021: Maura Gibney presented to Kaiser San Francisco’s Medical Social Work Department on CANHR Services, Discharge Issues & Evaluating Nursing Home Care.

• 9/30/2021: Pauline Shatara, Deputy Director presented to a class at the San Francisco State University Gerontology program about Legislative Advocacy.

• 10/5/2021: Tony Chicotel testified at the Assembly Health Committee’s informational hearing on nursing home oversight and enforcement.

• 10/6/2021: Maura Gibney and Bea Layugan presented to legal services staff about the overview of the long term care system and payment methods.

• 10/12/2021: Pat McGinnis presented to UC Hastings College of the Law on Medi-Cal.

• 10/12/2021: Patricia McGinnis, Pauline Shatara, Michael Connors, Efrain Gutierrez, Maura Gibney and Bea Layugan presented as a panel for a group of social workers to answer commonly asked questions on Medi-Cal, Medi-Cal Recovery and Residents’ Rights.
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:

**In Honor Of**

<table>
<thead>
<tr>
<th>Elodia Noriega</th>
<th>Carla Woodworth</th>
<th>Johann Von Flue</th>
<th>Kristin Stenehjem</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cesar Noriega</td>
<td>Martin Schiffenbauer</td>
<td>Caroline Von Flue</td>
<td>Patricia Stenehjem</td>
</tr>
<tr>
<td>My Husband, Mike</td>
<td>Ahuva Ben-David</td>
<td>Pauline Fitzpatrick</td>
<td>John Byington</td>
</tr>
<tr>
<td>Jean Alarid McKenna</td>
<td>Ariella Ben-David</td>
<td>Eve Rutzick</td>
<td>Kathleen Craver</td>
</tr>
<tr>
<td>Tony Chicotel &amp; Mike Connors</td>
<td>Geneva Carroll</td>
<td>Bonnie Jackson</td>
<td>Linda Johnson</td>
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**In Memory Of**

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<tr>
<th>Thelma Simons</th>
<th>Cele Charnow</th>
<th>Annabelle Cilman</th>
<th>Lorenza &amp; Archie</th>
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<tr>
<td>Julianne S Shumway</td>
<td>James A. Branson</td>
<td>Karen Cilman</td>
<td>Adele Johnson</td>
</tr>
<tr>
<td>Roy Pyle</td>
<td>Chester C. Brown</td>
<td>Frances Williams</td>
<td>Ms. Marie Malveaux</td>
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<tr>
<td>Katherine Castro</td>
<td>Linda Johnson</td>
<td>Jackie Johnson</td>
<td>Louis Labat</td>
</tr>
<tr>
<td>Bessie W. Harris</td>
<td>Cecilia Rodriguez</td>
<td>Maria Ruiz</td>
<td>George W. McClure, Jr.</td>
</tr>
<tr>
<td>Bobbie Williams</td>
<td>Kim A. Rodriguez</td>
<td>Verona Ruiz</td>
<td>Lynne McClure</td>
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<tr>
<td>Manuela Gomez Ojedo</td>
<td>Herman Chetlen</td>
<td>Catherine Sledd</td>
<td>Manuel N. Vasquez</td>
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<tr>
<td>Margarita Prado-Borrego</td>
<td>Martin Chetlen</td>
<td>Mike Lannen</td>
<td>Manuel Vasquez</td>
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<tr>
<td>Bruno Wartman</td>
<td>Marie Kowalski</td>
<td>Athen Cooper</td>
<td>Dwight Jensen</td>
</tr>
<tr>
<td>Patricia Moran</td>
<td>Donald R Kowalski</td>
<td>Mary Adams</td>
<td>Jody Yepson</td>
</tr>
<tr>
<td>Robert L. James, Esq.</td>
<td>Hester Miller</td>
<td>My Mother, Bea</td>
<td>Albert J. OCorinne Doig</td>
</tr>
<tr>
<td>Bentley P. Jenkins Esq.</td>
<td>Diane Carver</td>
<td>Jean Alarid McKenna</td>
<td>David R. Doig</td>
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<tr>
<td>June Beraha</td>
<td>Linda J. Pettibone</td>
<td>Sonia Isabel Noriega</td>
<td>Barbara Sarten</td>
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<td>Sabina Beraha</td>
<td>Roger B. Levin</td>
<td>Cesar Noriega</td>
<td>Cindy Abel</td>
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<td>Patricia Byington</td>
<td>Ken Napier</td>
<td>Lyn Weaver</td>
<td>Frank Belvin</td>
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<td>Kathleen Craver</td>
<td>Diane Dell’Armo</td>
<td>Joseph Mauro</td>
<td>Eleanor Belvin</td>
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<tr>
<td>Aunt Jan</td>
<td>Edward A. Jaworski &amp; Doris M. Keneman</td>
<td>My Mother, Mother</td>
<td>Rosemary Diel</td>
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<tr>
<td>Jenny Lanning</td>
<td>Joanne Jaworski</td>
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Explaination 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.

Alameda County

Bay View Rehabilitation Hospital, LLC
516 Willow Street, Alameda

A  $30000 Staffing  7/6/21

The facility had nursing hour documentation that was incomplete, illegible, or inaccurate and therefore could not be confirmed. As a result, the facility failed to have 3.5 hours of direct care staff time per resident on six of 24 sampled days from July through September of 2019. Additionally, the facility failed to provide at least 2.4 hours of certified nursing assistant time on 18 of 24 sampled days. Some staff was found to have suspended, expired, or revoked nursing assistant certifications. The facility was cited for failing to provide the minimum staffing to adequately care for residents.

Citation # 810016653

Mendocino County

Sherwood Oaks Healthcare Center
130 Dana St, Fort Bragg

B  $2000 Medication; Patient Care  3/26/21

On 11/21/19, the facility failed to ensure that a middle aged resident was free of medication errors. The resident was transferred to the facility to recover from a craniotomy, where they removed a portion of the bone of his skull to expose a part of the brain, and cancer treatment. The discharging hospital physician stated that the resident was calm and did not require psychotropic drugs. The physician also prescribed the resident with 6 mg of Dexamethasone to be taken twice daily. The facility failed to properly copy the physician’s orders and ordered 4 mg of Dexamethasone instead. Due to the facility’s failure, the resident experienced extreme pain, agitation and decline.

Citation # 110016361
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**Fresno County**

**Veterans Home of California - Fresno**
2811 W California Ave, Fresno

**B $700 Fall; Supervision 7/23/21**
On 7/29/20, the facility failed to provide adequate supervision to a resident who was a high fall risk and required toileting assistance. The resident fell in the bathroom and sustained a laceration to the back of his head.

Citation # 170016410

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**Los Angeles County**

**Baldwin Gardens Nursing Center**
10786 Live Oak Ave, Temple City

**A $2000 Fall; Supervision 6/14/21**
On 2/15/20, staff failed to provide one-to-one supervision of a resident with a history of falls, as outlined in her care plan. The resident was left unattended in a chair, stood up and fell face down on the ground. As a result, she suffered bleeding in the brain, a broken nose, and bleeding on the back of her eye, requiring transfer to intensive care at an acute care hospital.

Citation # 950016574

**Bay Crest Care Center**
3750 Garnet St, Torrance

**B $2000 Dignity; Verbal Abuse 3/25/21**
The facility failed to ensure a resident was free from verbal abuse when an LVN allegedly used an expletive and yelled at a resident. The facility also failed to follow its policies and procedures by conducting a thorough investigation.

Citation # 910016383

**Country Villa Pavillion Nursing Center**
5916 W Pico Blvd, Los Angeles

**B $2000 Medication 8/30/21**
A male resident with a broken ankle did not receive his pain medication on 5/17/21, despite his attempts to notify staff at various times, and suffered through a night of severe pain. A nurse told the licensing investigator that on 5/17/21, the facility was short staffed, stating “I think we only had three nursing assistants . . . It was very busy and I was running around a lot . . . that night we definitely needed more help.” The facility was cited for failing to provide proper pain management.

Citation # 920016865
**Glenhavem Healthcare**  
**212 W Chevy Chase Dr, Glendale**

**A $20000 5/5/21**  
A 68 year old female resident with a high risk of falls was found on the floor from a suspected fall on 2/2/20. A CNA and housekeeper helped the resident off of the floor but did not report the fall. More than 24 hours later, the resident complained of pain and could not move her legs. It was later discovered the resident suffered a fractured hip from her fall. The facility was cited for failing to note the resident’s change of condition and failing to contact her physician and obtaining timely treatment for her severe pain.  
Citation # 950016471

**Huntington Drive Health and Rehabilitation Center**  
**400 W Huntington Dr, Arcadia**

**A $20000 Medication; Patient Care 9/3/21**  
On 5/20/2020, the facility failed to listen to or respond to a resident’s complaints of pain, and failed to report changes in his condition to his physician. As a result, the resident suffered a 10 out of 10 severe pain and required emergency transfer to an acute care hospital and surgery for small bowel obstruction and bowel perforation.  
Citation # 950016870

**Glendora Canyon Transitional Care Unit**  
**401 W Ada Ave, Glendora**

**A $20000 Medication 6/9/21**  
The facility endangered two residents by significant medication errors. A 59 year old resident with diagnoses including epilepsy and cerebral palsy had five seizure episodes on 4/21/21 and was sent to the hospital after not having received multiple ordered medications to prevent seizures since her admission to the facility four days earlier on 4/17/21. A 95 year old resident was placed at risk of chemical imbalance and potentially serious harm when the facility failed to follow pharmacy medication label instructions to not crush potassium chloride extended-release and to not open two other prescribed medication capsules before administering them.  
Citation # 950016584

**Inland Valley Care and Rehabilitation Center**  
**250 W Artesia St, Pomona**

**B $2000 Neglect 6/17/21**  
A 78 year old resident with dementia and other medical concerns developed debilitating and painful muscle contractures throughout their legs, arms, and hands due to the facility’s failure to provide a range of motion or restorative nursing services. A nurse reported the resident was hard to turn from side to side because they screamed from discomfort due to the contractures. The facility was cited to provide a needed range of motion exercises.  
Citation # 950016621

**Lakeview Terrace**  
**831 S Lake Street, Los Angeles**

**A $20000 Decubiti (Bedsores); Neglect 6/10/21**  
On 11/22/20, one resident entered the facility with a Stage I bedsore, and on 12/3/20, 11 days later, it had progressed to Stage IV. On review, three additional residents were at risk of developing or further progression of bedsores because the facility failed to adequately check and reposition the residents on multiple days. Two of the three had a special mattress (LALM) to assist with the prevention of bedsores, but because the staff failed to check, one was not plugged in and the resident was lying on a metal bed frame, and the other was left on an incorrect setting that could increase the risk of developing bedsores. The facility was cited for failing to provide care consistent with professional standards.  
Citation # 920016575

**Landmark Medical Center**  
**2030 N Garey Ave, Pomona**

**B $2000 Mandated Reporting; Sexual Abuse 3/25/21**  
On 11/7/19, the facility failed to report a sexual abuse allegation to the Department. This failure prevented a resident with schizoaffective disorder from receiving a thorough investigation on a possible rape caused by another resident. The resident stated that for the past two months, she was forced into the bathroom to perform sexual acts that she did not consent to. The administrator of the facility did not report the allegation because she did not believe it happened. This failure put the resident at further risk of being sexually abused by the second resident.  
Citation # 950016382
LAUREL PARK BEHAVIORAL HEALTH CENTER
1425 Laurel Ave, Pomona

B $2000  Mandated Reporting; Sexual Abuse
4/28/21
On 3/12/21, the facility failed to respond to an allegation of sexual abuse for a female resident by failing to immediately (within 2 hours) report the allegation to the Department and other agencies as indicated in the facility’s policy. As a result the sexual allegation was reported late, violated the facilities policy and had the potential to cause harm to the resident and other residents in the facility. This violation had a direct or immediate relationship to the health, safety or security of the resident.

Citation # 950016447

LYNWOOD POST ACUTE CARE CENTER
3611 E Imperial Hwy, Lynwood

A $15000  4/1/21
The facility failed to have 3.5 hours of direct care staff time per resident on seven of 24 sampled days in August and September of 2019. Additionally, the facility failed to provide at least 2.4 hours of certified nursing assistant time on four of 24 sampled days. The facility was cited for failing to provide the minimum staffing to adequately care for residents.

Citation # 810016375

MAGNIFIQUE CONGREGATE LIVING, INC.
1827 West Avenue K12, Lancaster

A $100000  Neglect; Patient Care; Death 8/19/21
A 57 year old resident was transferred from another facility with an order to check oxygen levels if needed, but following arrival at the second facility, there was no indication that the resident’s physician was notified about the resident’s oxygen levels or that there was a nursing assessment. The following day a CNA checked on the resident and noted vital signs including low oxygen levels even though the resident was receiving oxygen. The CNA put the information on the nursing station but did not alert the licensed nurse that the resident’s oxygen level was low while the patient was receiving oxygen, and the nurse did not assess the patient or determine if any action should be taken. During a later interview, the nurse stated that she could not evaluate the resident because she had other tasks to complete. A short time later the CNA found the patient not breathing and the nursing staff started CPR and called 911. When emergency services arrived, the resident was pronounced dead.

Citation # 980016813

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

B $2000  Mandated Reporting; Physical Abuse
7/2/21
On 4/27/21, a resident pushed another resident, causing him to fall to the ground. A nurse witnessed the abuse but did not report it immediately to her supervisor, stating she was busy with three admissions and an incident involving another resident. The facility was cited because it reported the physical abuse allegation late to the Department of Public Health, failing to report it within two hours as required.

Citation # 950016690

SANTA TERESITA MANOR
819 Buena Vista St, Duarte

AA $100 000  Death 7/1/21
On 05/12/21, the facility failed to follow proper policies and procedures in using bed rails for several residents, including not adjusting bed rails based on the resident’s height and weight. As a result, a resident died of a brain injury after she was found by facility staff, unresponsive, with her head stuck between the bed rails and her mattress.

Citation # 950016681

WHITTIER HILLS HEALTH CARE CENTER
10426 Bogardus Ave, Whittier

B $1000  Nutrition 5/21/21
A resident suffered a severe weight loss of 20 pounds in 26 days from 1/19/21 to 2/14/21 when the facility failed to provide him with good nutrition when the resident started to lose weight. The Interdisciplinary team did not make recommendations to fortify the resident’s diet until 2/8/21 and the facility physician failed to order the fortified diet for the resident until 2/15/21. These failures placed the resident at risk for continued weight loss and nutritional risk.

Citation # 950016532

WOODLAND CARE CENTER
7120 Corbin Ave, Reseda

A $15000  7/15/21
The facility had nursing hour documentation that was incomplete, illegible, or inaccurate and therefore could not be confirmed. As a result, the facility was non-compliant with the state requirements for 3.5 hours of direct care staff time per resident on two of 24 sampled days and for 2.4 hours of certified nursing assistant time per resident on six of 24 sampled days. The facility was cited for failing to provide the minimum staffing to adequately care for residents.

Citation # 810016693
San Bernardino County

Highland Palms Healthcare Center
7534 Palm Ave, Highland

A $15000 Staffing 7/21/21
The facility was found to have inadequate staffing on two days in 07/19 and 08/19. State law requires facilities to have 3.5 hours of direct care staff per resident per day and the facility had fewer than 3.5 hours on the two surveyed days. The facility was cited for failing to have sufficient staff.

Citation # 810016715

Tulare County

Lindsay Gardens Nursing & Rehabilitation
1011 W Tulare Rd, Lindsay

A $20000 7/16/21
On 4/12/21, Cal DPH made an unannounced visit to the facility to investigate two complaints regarding a resident having an elevated blood sugar of 1130 and concerns that residents’ blood sugars were managed improperly. Based on interview and record review, the Department concluded that the facility failed to notify the physician of a change in condition for two of three sampled residents (Resident 1 and Resident 2) when Resident 1 and Resident 2 experienced episodes of hyperglycemia (increased blood sugar). These failures resulted in Resident 1 being hospitalized with potentially life-threatening complications and Resident 2 having the potential for adverse side effects. This violation presented either imminent danger that death or serious harm would result or a substantial probability that death or serious physical harm would result and represents a Class “A” citation.

Citation # 120016612
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