Governor Newsom Signs Three CANHR Bills Into Law

Long term care facility reform has had a remarkable three year run in Sacramento, capped by the Governor’s signing of all three of the bills CANHR sponsored in 2023. While the subject matter of the bills varied, all three promote the sharing of important information with facility residents so they can make better decisions about their care and treatment. We are exceptionally grateful to the legislators who authored the bills, the staffers who ensured their passage, the Legislature, the Governor, and the allies who supported the bills throughout the legislative process.

AB 48 (Aguiar-Curry) - At Long Last, Written Informed Consent for Psychotropic Drugs

When Governor Newsom signed AB 48, he brought closure to CANHR’s 14-year quest to require written informed consent for the administration of psychotropic drugs to nursing home residents. For decades, regulations ensuring the rights of nursing home residents to give informed consent before being administered psychotropic drugs have become less meaningful as enforcement and compliance diminished. Overdrugging has once again reached crisis levels, with an astounding 80% of people who have resided in a nursing home for at least 100 days being routinely given psychotropic drugs. Notwithstanding the drugs’ potentially fatal side effects and current regulations requiring informed consent, prescribers often fail to inform nursing home residents or their representatives of important risks and alternatives before these drugs are used.

[continued on page 3]
We are happy to congratulate Rebekah Nand, CANHR’s Administrative Assistant and Receptionist on her graduation from University of California Berkeley. Rebekah graduated with her Bachelor of Arts in Sociology this December.

CANHR was honored to be nominated for, and awarded a grant from the Armanino Foundation, which provides staff, partners and the Armanino firm, as well as clients, vendors and friends of the firm, a formal organization for community giving. We wish to also thank Chris Siegfried, who nominated CANHR after the release of an LA Times article which describes some of the advocacy CANHR engages in to improve access to vital home and community based services.

On November 17th and 18th, 2023, CANHR held its 26th annual conference in beautiful Monterey, California. Featuring sessions including a panel of representatives from the Department of Health Care Services, an in depth look at nursing home cost report data, updates on dramatic changes to Medi-Cal eligibility, and a discussion of how attorneys can use supported decisionmaking in working with clients with capacity challenges. We want to extend our immense appreciation to the speakers and presenters who volunteered to share their expertise and time, and the over 260 attendees who joined the conference in person and online. We look forward to seeing you in Monterey in November of 2024!

CANHR answers thousands of consumer calls each year, and provides advocacy services for older adults and people with disabilities across the state. Our services are free, and all donations – however large or small - can make a huge impact.
AB 48 enhances the current nursing home informed consent requirements in two critical ways. First, it requires doctors to provide pertinent information, like FDA-imposed Black Box warnings and whether a drug is being used “off-label” (for a purpose that is not FDA-approved). Second, AB 48 requires prescribers to use a written consent form, documenting that material information has been delivered and consent has been obtained. In addition, the bill requires nursing home staff to verify that a consent form is signed by the resident or their representative and made part of the resident’s medical record.

The use of mind-altering drugs without consent violates some of our most precious and fundamental human rights: the right to control what goes into our bodies, the right to our thoughts and expression, and the freedom to make our own decisions. Informed consent lies at the heart of residents’ ability to ultimately direct the course of their health care treatment. AB 48 ensures that residents’ choices will be appropriately honored. AB 48 sends a strong message that California will not tolerate the rampant drugging of nursing home residents and helps secure their rights to be treated with dignity, respect, and to direct their treatment.

AB 979 (Alvarez) - Bringing Family Council Laws Into the 21st Century

One of the many long term care facility problems exposed by the COVID-19 pandemic was the inability of family councils - organized groups of family members and friends of long term care facility residents who discuss quality of care - to meet and conduct business when visitor access was barred. California’s family council laws originated at a time before email communication and COVID lockdowns. The laws guarantee the use of facility space for in-person meetings and bulletin boards for displaying meeting notices and other communication, but do not account for virtual meetings or communication through email.

AB 979, authored by Assemblymember David Alvarez, modernizes the family council laws in both nursing homes and assisted living facilities by giving family councils the email addresses of residents’ family members, if they consent, so the council can reach out to those family members electronically. This critical information gives family councils a pathway to meet during public health emergencies or when virtual meetings are preferred to in-person meetings.

The bill also ensures facilities will be more responsive to concerns raised by family councils, discourages operators from undermining family council activities, and clarifies that control of the family council membership and participation in meetings lies with the family council itself. AB 979 also harmonizes family council protections in nursing homes and assisted living facilities, so that both settings have the same rules, which was long overdue.

AB 1309 (Gómez Reyes) – Protecting Against Inappropriate Nursing Home Discharges

With AB 1309, Assemblymember Eloise Gómez Reyes continued her excellent work to protect nursing home resident rights, building on 2021’s AB 849. AB 1309 requires nursing homes to share discharge plans and other key documents with residents they propose to discharge. This additional information will enable residents to better assess the safety of a proposed discharge and improve their chances of winning an administrative appeal if they pursue one.

AB 1309 requires facilities to provide residents with:

- The evaluation of the resident’s discharge needs and discharge plan;
- An explanation of the resident’s needs that cannot be met and the facility’s attempts to meet those needs if the facility is discharging the resident because it allegedly cannot meet their needs; and
- A copy of the resident’s discharge summary.
Evictions have long been a problem in nursing homes as they are often rushed and unsafe. AB 1309 will enhance residents’ and their representatives’ ability to assess a proposed discharge, challenge a proposed discharge when it is inappropriate, and ultimately better assure their safety when they move from a nursing home.

Other Important Bills Signed Into Law

Aside from the bills sponsored by CANHR, the Governor signed other bills addressing long term care. AB 1029 (Pellerin) facilitates the formation of Psychiatric Advance Directives and clarifies that certain highly invasive and inherently involuntary health care decisions cannot be made by a health care agent under an Advance Health Care Directive. AB 1417 (Wood) simplifies and improves the mandated abuse reporting process for elder and dependent adults residing in long term care facilities. SB 525 (Durazo) raises the minimum wage for health care workers, including certified nursing assistants in nursing homes, to $25 an hour by 2028, but only if a patient care minimum spending requirement is in effect. AB 1537 (Wood), which would create a minimum spending requirement, did not pass and is now a two-year bill that will be re-considered in 2024.

1 CANHR first sponsored legislation to require written informed consent in 2009, with SB 303 (Alquist). After a bumpy ride through the Legislature, and with myriad nursing home provider organizations opposing, SB 303 was vetoed by Governor Schwarzenegger. In 2018, after Human Rights Watch released a report called “They Want Docile: How Nursing Homes in the United States Overmedicate People with Dementia,” CANHR tried in vain to find a state legislator willing to try a written informed consent bill. Finally, in 2022, Assemblymember Aguiar-Curry reached out to CANHR, interested in tackling the nursing home overdrugging problem. Her AB 1809 was vetoed by the Governor in 2022 but she ran it back again as AB 48, this time successfully.
Ensuring Due Process and Appropriate Care:
The Office of the Long Term Care Patient Representative

In 2023, the Department of Aging launched its new Office of the Long Term Care Patient Representative (OLTCPR) to provide a public patient representative for “unrepresented” nursing home residents - those who lack the mental capacity to make decisions and have no surrogate decisionmaker. Health and Safety Code Section 1418.8 requires nursing homes to convene an interdisciplinary team to review proposed health care treatment for these residents. Each interdisciplinary team must include a patient representative who ensures the facility: complies with the required decisionmaking procedures, honors the resident’s preferences, and is not influenced by its own interests or biases. The new OLTCPR is now providing patient representatives to review health care treatment for unrepresented residents throughout the state. All nursing homes and intermediate care facilities are required to comply with Section 1418.8 whenever they are caring for an unrepresented resident.

Major Long Term Care Regulation Proposals Released

September proved to be a BIG month for long term care facility regulatory reform! The federal government proposed its first ever nursing home minimum staffing requirements. The National Consumer Voice for Quality Long Term Care has put together a handy webpage for making comments.

In addition, the California Department of Social Services released a major proposal for new dementia care regulations in assisted living facilities (also known as RCFEs). The updated regulations would assure that every facility is dementia-care competent and would end a very problematic regulatory division between facilities that care for residents with dementia and those that don’t.

For both sets of regulations, CANHR prepared comments, which were shared with residents and advocates to assist in fashioning their own comments.

Public Weighs in on Nursing Homes and It Ain’t Pretty

A Gallup poll revealed that more than 40% of queried adults give U.S. nursing homes a “poor” to “failing” grade with only 1% describing nursing home quality as “excellent.” A whopping seven out of ten adults report “they would be very or somewhat uncomfortable with being admitted to a nursing home if they could no longer care for themselves.” The evaluators of the poll concluded, “on balance, nursing homes are considered unsafe.”

Ownership Changes a Symptom, Not a Cause, of Bad Nursing Home Care

A new article in the Journal of the American Medical Association (JAMA) investigates changes in ownership within nursing homes in the United States between 2016 and 2019 and their potential impact on short-stay Medicare patient outcomes. The key findings of the study suggest that SNFs with characteristics historically associated with lower quality, such as for-profit status and lower staffing ratings, were more likely to undergo ownership changes. However, these ownership changes were not significantly associated with differences in most short-stay patient outcomes. The study concludes that changes in ownership may be a symptom, rather than a cause, of lower quality for short-stay patients in SNFs.

Involuntary: A Short Film about Nursing Home Resident Dumping

Involuntary is a powerful 12-minute short film about a heartless nursing home resident eviction, largely from the perspective of the resident. With very little dialogue, this spare and haunting look at resident dumping demonstrates how awful some evictions can be.
California Scores Well on Long Term Services and Supports Scorecard

The AARP Public Policy Institute (PPI) has released its updated scorecard comparing state Long-Term Services and Supports (LTSS) systems across multiple dimensions of performance. California’s ranked 11th overall among the states on the scorecard.

In terms of Affordability and Access, California ranked 30th. This dimension considers indicators such as home care and nursing home costs as a percentage of median household income for individuals aged 65 and above. In Choice of Setting and Provider, California ranked 1st, signifying the state’s excellence in providing options and flexibility in choosing appropriate care settings and providers for LTSS. The Safety and Quality dimension had California in 4th place, highlighting the state’s commitment to maintaining a high level of safety and quality in LTSS. In Support for Family Caregivers, California ranked 15th, indicating a moderate level of support provided to family caregivers. Lastly, in terms of Community Integration, California ranked 31st, suggesting room for improvement in integrating individuals into their communities effectively.

Overall, the scorecard reflects California’s commitment to creating community-based options for long term care while pointing out some important areas for improvement.

SB 525 – Raising The Minimum Wage For Healthcare Workers

SB 525, a newly enacted California law effective June 1, 2024, substantially elevates the minimum wage for healthcare workers, encompassing both hourly and salaried employees.

The new minimum hourly wage will start at $21.00 per hour starting June 1, 2024, and will escalate biannually until the minimum wage reaches $25.00 per hour on June 1, 2028.

SB 525 does not cover workers at skilled nursing facilities until a minimum direct care spending law is passed (read about and please support AB 1537 (Wood)).

The inclusion of ancillary staff, such as janitors and clerical workers, and independent contractors recognizes that everyone within a healthcare facility contributes to the overall well-being and comfort of patients. By addressing wage disparities and providing a private right of action to enforce minimum wage requirements, SB 525 acknowledges the pivotal contributions of healthcare staff, affirming that quality healthcare begins with equitable treatment of healthcare workers.

Nursing Home Residents’ COVID Experience Featured on PBS

Fire Through Dry Grass is now available for streaming on PBS. The documentary film, from OPEN DOORS/Reality Poets, uncovers the real-time devastation experienced by residents of a New York City nursing home during the COVID pandemic. Using GoPros clamped to their wheelchairs, Andres “Jay” Molina and fellow Reality Poets, Vincent Pierce and Peter Yearwood, all residents of Coler Nursing Home, on Roosevelt Island, New York, document their isolation and frustration while on a year-long “lock down.”

Inflamed: Abandonment, Heroism, and Outrage in Wine Country’s Greatest Firestorm

“ Inflamed,” published by Permuted Press and distributed by Simon & Schuster, tells the dramatic story of courageous individuals who helped rescue senior citizens left in the path of the catastrophic Tubbs Fire in 2017. The story also delves into the quest for accountability afterward, the state and local investigations that followed and what the firestorm revealed about the increasing risks to our most vulnerable population. The book features interviews with CANHR staff, including Mike Connors, retired Senior Policy Advocate. “Inflamed” was released on October 31st, and is available for purchase through Copperfield’s Books or Amazon.
January 2024 Medi-Cal Managed Care Plans Transition

Many Medi-Cal Managed Care Plan options across California are changing on January 1, 2024, and approximately 1.2 million participants will have new health plan options or may need to change to a new plan. Changing Managed Care Plans should not affect Medi-Cal members’ coverage or benefits. DHCS developed several resources to support members, providers, and other stakeholders with the transition, including the Managed Care Plan Transition Member webpage with a county “lookup” tool, links to member notices sent by Medi-Cal about MCP changes, frequently asked questions, and a Contact Us page for members to learn more about health plans and provider choices. There are also transition resources for providers and MCPs and stakeholders. More information about the transition is available in Medi-Cal Eligibility Division Information Letter Number 123-54.

Home & Community Based Services Available Through Medi-Cal

Learn about different Medi-Cal covered programs that help people receive care and support in their home or in the community including:

- In Home Supportive Services
- Assisted Living Waiver
- PACE, MSSP and more!

https://tinyurl.com/canhrhcbs2023
Gift Ideas for Residents of Long Term Care Facilities

It’s that time of the year! As you make out your shopping list for this holiday season, here are a few suggestions for gifts for long term care residents in your life:

✦ If the resident is in a wheelchair or uses a walker, find an attachable tote bag or basket.

✦ A favorite book or audio book.

✦ A television for the resident’s room, or wireless headphones to hear the television.

✦ Crossword or word search books - in large print if need be.

✦ Subscribe to a hometown newspaper or a favorite magazine.

✦ Brighten up the resident’s room with a quilt or a blanket, a low-maintenance plant or have flowers delivered on a regular basis.

✦ Bring a family video to enjoy together.

✦ Send a calendar with important dates, such as birthdays and anniversaries.

✦ Send the resident cards, stamps, and envelopes they need to send out their own holiday cards.

✦ A photo album of pictures taken in the last year of friends, family, pets, and other loved ones.

✦ Purchase a gift certificate for a nice self-care day. Treat yourself and go with the resident.

✦ A new pair of comfortable slippers, funny socks, or a robe in their favorite color.

✦ Of course, one of the best gifts for a long term care resident is the gift of your visit!
Dear Advocate:

My dad was found eligible last year for 42 hours under the In-Home Supportive Services program, which pays for the in-home care he needs around the house to help him stay at home and avoid a nursing home. I have been working as his IHSS caregiver, mostly helping him with cooking and cleaning. Over the past year, his needs have increased due to balance issues. Is it possible for him to get an increase in IHSS hours so he can continue to live at home?

Sincerely,

Exhausted in Emeryville

Dear Exhausted,

It may be possible to get an increase in IHSS hours by requesting a reassessment, and demonstrating for the county how your father’s needs have increased. According to the IHSS Manual of Policies and Procedures MPP§30-761.219(a)(b), the county shall reassess the recipient’s need for services:

(a) Any time the recipient notifies the county of a need to adjust the service hours authorized due to a change in circumstances.

(b) When there is other pertinent information, which indicates a change in circumstances affecting the recipient’s need for supportive services.

Under IHSS rules, the IHSS recipient, their service provider, a family member, or other agency (such as a health insurance plan), may request this reassessment. The best way to inform the county is to document the change in your father’s needs and the areas of care in which he now needs assistance, for example, through completing a self-assessment worksheet. You may also want to ask his physician, if they are aware, to document your father’s balance problems. For more information about IHSS including how to assess hours and prepare for the interview, read Disability Rights California’s IHSS Self-Assessment and Fair Hearing Guide.
We wish you joy, wellness and peace in 2024, and, with your support, we’ll continue to advocate for the rights of all long term care residents.

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/
Did You Know? Authorized Representatives for Medi-Cal

Medi-Cal applicants and participants can designate individuals, such as their family members or friends, or organizations as an authorized representative (AR) for help communicating with Medi-Cal about enrollment and eligibility. ARs can help Medi-Cal applicants and participants by speaking to case workers, providing documents requested, and by advocating when problems arise. Individuals can cancel or change AR selections at any time, and can update AR selections with the local Medi-Cal office in person, by mail, phone, email or portal.

CANHR has recently heard from the families of Medi-Cal participants who have lost decision making capacity, that local counties are advising that a conservatorship is required in order for them to serve as an AR for their loved one. In these cases, the Medi-Cal recipient signed a health care directive before losing capacity, assigning a family member as their agent. A recent state policy letter clarifies that when counties receive legal documentation, such as Power of Attorney, which may include an Advanced Health Care Directive or POA for health care, it is not required to complete county AR forms. In addition, the Power of Attorney can appoint an additional or separate AR to represent the Medi-Cal applicant or participant, but will need to complete an MC 382 to appoint that additional representative.

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
Nursing home residents and their family members often worry about losing their rooms or their Medicare or Medi-Cal status if they leave the facility for brief periods of time. While the rules for Medicare and MediCal differ, both programs will permit, and reimburse the facility for short leaves – depending on the length of the leave.

Residents whose skilled nursing facility care is paid for by Medicare can leave the facility for short visits, subject to Medicare rules. The Medicare Policy Manual states that residents who leave the facility for an “outside pass or short leave of absence for the purpose of attending a special religious service, holiday meal, family occasion, going on a car ride, or trial visit home” can do so without losing their coverage. By taking a temporary leave of absence for these purposes, Medicare recognizes this does not necessarily indicate the resident does not meet the skilled nursing facility level of care (Chapter 8 §30.7.3). If they return by midnight, the facility can bill Medicare for the day.

If the resident is gone overnight, past midnight, and returns the next day, this is considered a leave of absence and the facility can bill the beneficiary to hold the bed during an absence. Chapter 1 § 30.1.1.1 of the Medicare Claims Processing Manual outlines how Medicare beneficiaries may take a brief leave of absence by making out of pocket bed-hold payments to the facility. Under 42 CFR 483.10(g) (17)-(18), the facility must inform residents in advance of their option to make bed-hold payments, including the daily rate amount. Although this is required of the facility, it is important for residents or their family members to also ask the facility for the daily rate cost, since the daily rate for room and board at a nursing home can be high.

Residents whose nursing home care is paid by Medi-Cal have a much more liberal leave policy, but it is also subject to certain restrictions. Under Medi-Cal rules, a leave of absence of up to 18 days per calendar year can be granted to a Medi-Cal resident of a nursing home in accordance with the resident’s care plan, and the facility will continue to be reimbursed for care. Up to 12 additional days of leave per year in increments of two days may also be granted under certain conditions. See 22 CCR §51335 as specified conditions are outlined. The resident, family members, or their friends should ensure that provisions for leaves of absences are included in the resident’s care plan.
CANHR’s Lawyer Referral Services (LRS) is the only statewide referral service that deals primarily with elder law issues, is certified by the California state bar, and uses rigorous screening requirements to select only highly qualified and experienced elder law attorneys. LRS attorneys are committed to serving the needs of seniors and their loved ones in a multitude of areas – elder abuse, neglect and injury, estate planning issues, and protective services.

In 2023, 19 civil cases originating from CANHR’s Lawyer Referral Service (LRS) were litigated to a favorable resolution by LRS Panel Attorneys throughout 12 California counties, gaining justice and accountability for residents in long-term care facilities. Currently, LRS panel members are working on 61 active cases throughout California. A tip of the hat and congratulations to all CANHR Panel Attorneys throughout the state who were victorious this past year in holding long term care facilities accountable!

Complete an online LRS request today:

https://canhr.org/contact-canhrs-elder-law-lawyer-referral-service-lrs/

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**Medi-Cal Eligibility and Updates in 2023**

- Learn about Medi-Cal eligibility for older adults and people with disabilities
- Hear updates on current and upcoming changes to Medi-Cal eligibility rules, managed care plans, and services

https://tinyurl.com/canhrmedical2023
New “community supports” programs are available to Medi-Cal managed care beneficiaries in nursing homes, at risk for placement in nursing homes, experiencing homelessness, or at risk of losing their housing. There are 14 community support programs available in total, however not all managed care plans offer all of the options. Read about some of the available supports below, and check your managed care plan’s website to find out what supports they currently offer. CANHR has also developed a new Community Supports resource spreadsheet which summarizes the programs offered by each plan.

Housing: There are three different supports available for housing. For individuals experiencing homelessness, or at risk for homelessness, assistance may be available including finding and securing housing, providing deposits, first and last month’s rent, utility set up, with possible ongoing support to sustain rent, or to avoid eviction.

Short-Term PostHospitalization Housing: Up to six months temporary housing for individuals with complex medical, mental, or substance abuse needs after being discharged from a facility such as a skilled nursing facility.

Recuperative Care (Medical Respite): Short term residential care for individuals with unstable housing who still need to heal from an injury or illness.

Day Habilitation Programs: Individuals who are currently experiencing homelessness, are at risk, or were previously without a home, can receive training on skills needed to live successfully in the community such as use of public transportation, cooking, cleaning, and managing personal finances.

Respite Services: Short-term relief for caregivers of Medi-Cal managed care members, offering caregiver services in the home or in an approved facility on an hourly, daily, or nightly basis as needed.

Nursing Facility Transition/ Diversion to Assisted Living Facilities: Offers placement in an assisted living facility as an alternative to a skilled nursing facility. Assisted living can provide services such as activities of daily living, medication management and 24 hour onsite direct care staff.

Community Transition Services/ Nursing Facility Transition to a Home: Individuals moving from a nursing home to a home can receive funding for items related to the transition such as deposits, utility set up fees, hospital beds and more.

Personal Care and Homemaker Services: In-home support such as assistance with hygiene, meals, household chores and other activities of daily living.

Environmental Accessibility Adaptations (Home Modifications): Funding is available for modifications in the home that will allow for greater independence and well being. Modifications include but are not limited to, ramps, grab bars and making bathrooms wheelchair accessible.

Medically Supportive Food/ Medically Tailored Meals: Can provide meals or vouchers for meals.
Boiling Frogs: RCFE Rate Increases and Add-On Charges

Sue Ellen moved into a Residential Care Facility (RCFE) in March 2023 for moderate assistance with activities of daily living and the social opportunities of living with other residents and engaging in planned activities. She was assessed by facility staff and assigned 150 “care points” at a daily cost of 50 cents per point, in addition to her flat rate of $150 per day. Sue Ellen’s total bill was thus $225.00 per day ($150 flat fee plus $.50 x 150), which fit comfortably within her monthly budget of about $7,500 per month.

Just one month later, Sue Ellen was “reassessed” and assigned 210 care points, raising her daily rate to $255. By July, she was assigned 330 care points, and by October, it was a whopping 455, raising her daily rate to an astronomical $377.50, resulting in a monthly rate of nearly $12,000, far greater than her budget. Sue Ellen and her family argued that her condition and abilities in October were identical to what they had been in March to no avail. Sue Ellen fell behind on her monthly payments, became depressed, and was soon facing imminent eviction for failure to pay her bill.

Sue Ellen’s story is far from unique. A typical RCFE contract purports to give the facility management the sole discretion to determine what residents’ “needs” are, and to assign and charge for services to meet those needs. The residents are left at the mercy of the facility. In many RCFEs, this means the facility’s financial needs, and not the residents’ clinical or care needs, dictate the care provided to the residents.

Facilities often lure residents with low monthly prices and then impose dramatic raises in the guise of needs reassessments and assigning more care services. Within months, residents may be paying two to three times as much in monthly fees as they were when they moved in. This is the “boiling frog” approach to rate increases. Just as a frog will reportedly leap from a pot of boiling water but eventually cook to death in warm water when the temperature is slowly but methodically increased, RCFE residents will skip facilities charging $12,000 per month but can be forced to pay that much after moving in at a much lower rate. RCFEs understand that RCFE residents are reluctant, or find it difficult, to pick up and move once they’ve become accustomed to the facility. Facilities therefore increase rates knowing, to some extent, they have a dependent and captive customer base.

The list of services that facilities impose on residents after they have moved in is extensive but three common examples are:

- **Walking assistance:** a staff person will walk with the resident (e.g., to and from the dining room or to and from activities) to ensure they do not fall.
- **Medication administration:** this may include storing medications, passing them out to residents, or reminding residents when to take their medications.
- **One-to-one care:** having a person assigned to supervise a resident every waking moment or 24 hours a day. This service can be enormously expensive - about $35 per hour, on top of all the other daily or monthly charges.

The Right to Refuse Services

Additional services that facilities force on residents after they have moved into an RCFE can be potentially helpful but may be considered unnecessary by residents or their representatives, especially when they cost hundreds or thousands of additional dollars each month. While RCFE contracts seem to give facility management the ability to unilaterally impose new services, the provision of care is a two-way street. Residents have the right to refuse “medical care or other services” (Cal. Code of Regs. Sec. 87468.1(a)(16)). It’s their lives after all; they should be allowed to reject any service they do not want.

[continued on next page]
Guidance from the Department of Social Services’ Community Care Licensing Division (CCLD) supports the idea that residents may reject RCFE services. In its old Evaluator Manual, CCLD stated “the resident may choose which services he or she wants” and with respect to charges for one-to-one care, CCLD wrote in a Spring 2012 newsletter that:

“An RCFE licensee cannot require a resident to hire a 24-hour caregiver.

Under Health & Safety Code section 1569.312, a RCFE must provide basic services, which by definition include assistance with activities of daily living. Regulation sections 87464(f) - Basic Services and 87608(a) - Personal Assistance and Care describe these services that required to be provided by the licensee to meet the needs of residents such as safe and healthful living accommodations; personal assistance and care; observation and supervision; planned activities; food service; and arrangements for obtaining incidental medical and dental care. The licensee cannot delegate these services.”

If residents were not able to refuse services and be free of additional unwanted charges, RCFE contracts would likely be considered legally unconscionable and therefore unenforceable. Allowing one party to a contract to dictate all services and charges is so extremely one-sided that it is patently unfair. Imagine hiring a house painter who got to decide how often your home needed to be painted and could impose add-on charges for anything they deemed “necessary.” Such a one-sided contract is absurd, and yet that is how many RCFE contracts are structured.

What to Do

The best way to stay out of a one-sided RCFE contract is to refuse to sign one or to add in a clause that explicitly recognizes the resident’s right to refuse unwanted services (yes, you can make changes to contracts before they are signed). If you have already signed an agreement, do not fret - you still have the right to refuse to pay extra for services that you already pay for, or decline unwanted services.

Be sure to put your refusal and reasoning in writing and be careful not to decline a service that otherwise prevents you from meeting the criteria for an eviction. For example, if you decline medication administration but, as a result you make medication errors and your health declines, the facility could argue that it is no longer able to meet your care needs and keep you safe. The services that are most justifiably declined are those that are truly unnecessary.

If you are unsure about your rights regarding the imposition of unwanted services or rate increases, please contact CANHR.
CANHR On The Move

• 9/13/2023: CANHR Deputy Director Pauline Shatara was invited to present to Kaiser Social Workers on Medi-Cal Recovery and Common Estate Planning Tools.


• 9/20/23 Advocacy and LRS Specialist Bea Oliva led a statewide virtual presentation on Medi-Cal Basics for CANHR’s Social Worker Advocacy Program.

• 9/21/2023: Policy Advisor Patricia McGinnis was invited by Sequoias San Francisco to present to residents about CANHR and Continuing Care Retirement Communities.

• 9/27/2023: Pauline Shatara led a statewide virtual presentation on Home and Community-Based Services Under Medi-Cal for social workers across California.

• 10/10/2023: Office Manager Armando Rafailan and Consumer Advocate Alex Valdes were invited to attend the 6th Annual Aging Your Way Senior Fair hosted by the Institute on Aging in San Francisco. They hosted an information table on CANHR services for older adults in San Francisco.

• 10/21/2023: Executive Director Maura Gibney presented on Medi-Cal eligibility, Home and Community-Based Medi-Cal programs, and Medi-Cal recovery as part of an event hosted by the San Francisco Public Library.

• 10/23/2023: Bea Oliva conducted a presentation on Medi-Cal eligibility and Medi-Cal recovery for Community Health Partnerships Santa Clara.

• 10/31/2023: Staff Attorney Tony Chicotel was invited by The National Consumer Voice for Quality Long-Term Care to present at their annual conference on “Lessons Learned from the Decertification of America’s Largest Nursing Home,” in Baltimore, Maryland.

• 11/3/2023: Tony Chicotel presented to the Professional Fiduciary Association of California on Long Term Care Myths.

• 11/7/2023: Tony Chicotel presented a training titled, “Why Are Nursing Homes so Scary?” for law students and volunteers of the McGeorge Elder Law Clinic.

• 11/9/2023: Tony Chicotel presented to law students of the UC College of Law and the San Francisco Medical Legal Partnership clinic on “Why Are Nursing Homes so Scary?”

• November 17 & 18: CANHR hosted its 26th annual Elder Law Conference at the Monterey Plaza Hotel. The conference included training for private bar attorneys, social workers, and legal services attorneys.

• 12/4/2023: CANHR staff held a roundtable discussion of residents’ rights and the right to leave for legal services staff across California.

CANHR staff members Armando Rafailan and Alex Valdes at the Aging Your Way Senior Fair in San Francisco.
NEED AN ATTORNEY?

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**In Honor Of**

Sarah Colby  
*Claudia Center*

Pat McGinnis  
*Agnes Summers*

Arabelle Malinis  
*Jeff Lundwall*

Mom and Dad  
*Gary Peterseil*

Pat McGinnis  
*Mary McLoughlin*

Pat McGinnis & Maura Gibney  
*Sara DuBois*

Rita Calvano Smith  
*Joni Halpern*

Pat McGinnis  
*Angela Donnelly*

Michael Connors  
*Judith Kenney*

Serge Kohan  
*Rhen Kohan*

Elia Albicker  
*Valerie Albicker*

John Paul Curran  
*McClellan McClellan*

Arabelle Malinis  
*Carla Manning*

**In Memory Of**

Mary Ann Berthoud  
*Philippe Berthoud*

Bonnie Brenner  
*Gharibian Law*

Vondina Thomson  
*Lance Thomson*

Amparo Garcia  
*Paul Meyers*

Sylvia Bray  
*Richard D. Bray*

Ronald D Jackson  
*Myesha Jackson*

Sam Rios Jr.  
*Jay Renneisen Esq.*
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 frontdesk@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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Explanation of citation classifications: Class “AA” citations are issued for violations that are a substantial factor in the death of a resident and carry fines of up to $120,000. Class “A” citations are issued when violations present imminent danger to a resident or the substantial probability of death or serious harm, and carry fines of up to $25,000, except in cases involving the death of a resident, when the Class “A” penalty can be up to $60,000. Class “B” citations carry fines of up to $3,000 for violations that have a direct or immediate relationship to a resident’s health, safety, or security, but do not qualify as Class “A” or “AA” citations. “Willful material falsification” (WMF) and “willful material omission” (WMO) citations carry fines of up to $25,000. Fines are not always required to be paid. Citations can be appealed. Violations repeated within twelve months may be issued “trebled fines”— triple the normal amount.

Napa County

Veterans Home of California - Yountville
100 California Drive, Yountville

A $2000 Careplan; Injury 8/17/23

A 90 year old resident with dementia and arthritis suffered a broken knee and a bruised leg on 5/9/22 after staff used the wrong type of lift device to assist in transferring the resident from his bed to a wheelchair. The resident wasn’t able to utilize the support features of the device and his legs ended up unnaturally bent. The bruise became infected, requiring removal of infected bone. The resident died on 6/13/22. The facility was cited for failing to update the resident’s careplan to reflect the recommendation to use a different lift assistance device.

Citation # 170018928

Sacramento County

Mountain Manor Senior Residence
6101 Fair Oaks Boulevard, Carmichael

A $25000 Careplan; Injury; Patient Care; Supervision 11/15/23

On 3/7/23, a 75 year old resident hit a 73 year old resident on the face and arms with a fist. The 73 year old resident was hospitalized and treated for facial swelling and a closed head injury. The 75 year old resident was arrested for felony elder abuse. The facility failed to prevent this resident to resident altercation that resulted in a hospitalization and an arrest. The facility also failed to adequately assess the 75 year old resident’s history of combative behavior and follow facility policy and assessment for residents with a combative behavior history.

Citation # 030019359
Santa Clara County

**Valley House Rehabilitation Center**  
991 Clyde Ave, Santa Clara

**A $25 000 Dietary Services; Feeding; Patient Care; Supervision; Death 1/19/23**

A resident diagnosed with Parkinson’s Disease and a condition which makes the resident at risk for choking, required easily mashed foods, excluding sticky, bulky, or foods that are difficult to chew and supervision while eating. On 2/17/22, the facility failed to ensure their staff was aware of his food restrictions, which resulted in a CNA feeding him a peanut butter and jelly sandwich which caused the resident to choke. The resident was transferred to the hospital where they performed surgery and removed the mass of food from the back of his throat. However, the resident never recovered and passed away the same day.

Citation # 070018212

Santa Cruz County

**Watsonville Nursing Center**  
535 Auto Center Dr, Watsonville

**A $25 000 Fall; Injury; 11/9/23**

On 6/23/23, a resident fell from a mechanical lift while being assisted by staff. An LVN was called into the room by a CNA. The resident was already on the ground and there was blood on the floor. While using the mechanical lift to transfer resident from the ground to a shower chair, the resident fell resulting in cuts to her forearm and lip as a result of improper use and protocol of the mechanical lift.

Citation # 070018933
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Los Angeles County

GRANADA HILLS CONVALESCENT HOSPITAL
16123 Chatsworth St, Granada Hills

A $25,000 Careplan; Fall; Injury; Patient Care; Transfer 11/9/23

The facility failed to provide a resident, who was a fall risk and was totally dependent of staff for transfers, a safe environment and the safe use of an assistance device to prevent accident and injuries as indicated on the comprehensive plan of care. On 6/12/23, a CNA transferred the resident by herself using a Hoyer lift, instead of two people assisting as required. As a result, the resident fell and sustained a head injury requiring a transfer to hospital, where the resident received six staples to the cut on their scalp.

Citation # 920019356

NORTH VALLEY NURSING CENTER
7660 Wyngate St, Tujunga

A $25,000 Neglect; Patient Care; Discharge 10/27/23

A resident was discharged home on 9/6/23 and experienced low levels of oxygen in the blood leading them to be emergency transferred to a hospital. The facility failed to discharge the resident with durable medical equipment, failed to provide health teaching related to supplemental oxygen equipment use and safety, and failed to ensure safe, proper and smooth transition from the facility to home.

Citation # 920019308

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A $25 000 Elopement; Neglect; Patient Care; Security; Supervision 10/11/23

A 63 year old resident was admitted to the facility with epilepsy, bleeding between her brain and skull and unspecified psychosis. The resident was a high risk for wandering, wore a wander guard bracelet, required one-to-one supervision and had a history of taking staff’s personal items. The resident’s one-to-one sitter left the resident out of sight in a restroom with two exits, which resulted in the resident wandering out of the restroom, taking another nurse’s car keys that were unattended on the counter, and driving away from the facility on the day of a severe storm. The resident was found by the police the following day in a park. The facility’s staff also failed to adhere to appropriate policies relating to the alarm and promptly calling a Code Grey (used when a resident is missing).

Citation # 920019249

A $20 000 Patient Care; Staffing; Death 10/10/23

The facility failed to ensure an LVN performed CPR for a resident in accordance with the facility’s own policy and procedure as well as guidelines issued by the American Heart Association. A CNA found the resident in bed and unresponsive on 7/18/23 at 7:35 am. During CPR, the LVN placed a non-rebreather mask and administered oxygen when the resident was not breathing. As a result, there was lack of oxygenation for the resident. The paramedics transferred the resident to the hospital via emergency service on 7/18/23 at 7:43 am. However, the resident died two days later.

Citation # 920019250

A $25 000 Careplan; Elopement; Supervision 9/1/23

A resident with schizophrenia, malnutrition and depression left the facility unsupervised on 7/18/23. As of 9/1/23, she had not been found. On 7/15/23, the resident had been found on the smoking patio, reluctant to return to the building because she was afraid for her safety. The resident was noted as being paranoid and had a history of leaving facilities against medical advice, but her physician was not notified of her change in condition and her careplan was not updated to reflect an wandering risk. The facility was cited for failing to initiate its “wandering and elopement” policies and for failing to notify the resident’s physician when she went missing.

Citation # 910018741

A $25 000 Injury; Supervision 10/20/23

On 8/28/23, a 57 year old resident punched his 80 year old roommate in the face while he was watching television, causing a black eye. The younger resident had a history of psychosis and methamphetamine use and of “bizarre” and aggressive behavior. A CNA had been assigned to monitor the hallway and make sure the residents’ needs were met and no altercations occurred, but he inexplicably refused the assignment and no monitoring was provided. When the victim cried out for help, none came and he was punched again. Fearing further punches, the victim remained quiet and was left feeling frightened and helpless. The facility was cited for failing to ensure the residents were adequately supervised.

Citation # 910019288
A $50,000 Careplan; Neglect; Patient Care; Supervision; Death 8/15/23

A wheelchair-bound resident with Alzheimer’s disease, a brain injury that resulted in weakness on one side of his body and heart failure was left unattended and found outside on the patio on a hot day, 7/11/23. The resident was able to wheel himself around the facility and was not seen for one and a half hours. When he was found, the resident was unresponsive and had no pulse. The resident had a DNR (do not resuscitate), and passed away.

Citation # 240019059

A $3500 Elopement 4/13/23

On 1/4/22, a resident of the facility left unnoticed around 7:15 am. The facility failed to call the local law enforcement and notify the resident’s family members. The resident was missing for about 75 minutes and was later found by a busy street, bleeding from injuries, about a mile from the facility by a passerby.

Citation # 050017470
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