

CANHR is a private, nonprofit 501(c)(3) organization dedicated to improving the quality of care and the quality of life for long term care consumers in California.

## Rate Increases and New Charges: What's Permitted?

Some RCFEs are trying to pass along increased costs from the COVID-19 pandemic to their residents. The higher costs can take the form of a rate increase for current items and services, or charges for new items and services. Whether it is legal for the RCFE to increase a resident's rates or add new charges depends on several factors discussed below.

### RATE INCREASES

In general, RCFEs are free to set their own rates and charge whatever amount residents are willing to pay. However, California law requires that facilities comply with certain notice requirements for rate increases to be valid. Specifically, RCFEs are required to give at least 60 days prior written notice of an increase in any rate for services, except for an increase in rate due to a change in level of care for a resident.\* The written notice must include the amount of the increase, the reason for the increase, and a general description of the additional costs. (Health & Safety Code section 1569.655(a).) Additionally, some admission agreements may provide additional requirements for rate increases that are even more protective than the above laws, i.e., all rate increases must be signed by the Executive Director, the facility will not raise rates during the first year of admission, or the facility will raise its rates no more than once a year.

Unfortunately, there is no prohibition against RCFEs passing along COVID-related costs. For example, if a RCFE proposes to increase the monthly fee for all residents by \$200 a month to cover the cost of PPE for residents, staff and visitors, the increase would be legal if it complies with the written notice requirements discussed above, and any additional protections set forth in the admission agreement.

### RENT CONTROL

With respect to limits on the amount and frequency of rate increases, California law provides that "Licensed [RCFEs] are not subject to controls on rent imposed by any state or local agency or other local government entity." (Health & Safety Code section 1569.147(b).) Additionally, it is the opinion of the California Department of Social Services (the state agency which licenses and regulates RCFEs) that a new state law imposing rent control for certain residential real property does not apply to RCFEs. (*AB 1482-Tenant Protection Act of 2019*, amending Civil Code section 1947.12.). While CANHR believes that AB 1482 may apply to certain RCFE residents in limited cases, the State's contrary position means that any complaints to the Department of Social Services would not be substantiated, i.e., it will not impose a cap on RCFE rate increases. Unfortunately, residents who wish to test whether the AB 1482 protections apply to RCFEs will have to do so via civil litigation.

### NEW CHARGES

The rates that a RCFE may charge for basic services and additional items and services may vary, depending on the services that the resident needs and uses. For all residents, the admission agreement must clearly indicate what the charges are and what services are provided for the charges. **No fee may be charged that is not clearly stated in the admission agreement.** (Health & Safety Code section 1569.884(a)-(c); Cal. Code of Regulations, Title 22, section 87507(g)(3).) If an RCFE wants to charge a resident for a new item or service that was not available at the time the agreement was signed, it **must give a list of the new items/services and corresponding charges to the resident for his or her acceptance or refusal.** The RCFE

must also attach to the admission agreement a signed and dated statement acknowledging the resident's decision regarding the purchase of the new items or services. (Health & Safety Code section 1569.884(c); Cal. Code of Regulations, Title 22, section 87507(g)(3)-(5).)

Here are a few tips for challenging rate increases and new charges.

1) **Read the Admission Agreement!** When it comes to RCFE rates and rate increases, there is nothing more important than the admission agreement. If the item or service and corresponding charge is not included in the agreement, or not adequately described, it may be disputed. (Health & Safety Code section 1569.884; Cal. Code of Regulations, Title 22, section 87507.). Also, check to see whether the admission agreement include additional protections involving rate increases, and make sure that the RCFE has complied with these requirements.

2) **Review the Rate Increase Notice.** As discussed above, all rate increases require written notice, and are subject to limits based on percentage and frequency. (Health & Safety Code section 1569.655; Civil Code section 1947.12.). Review the rate increase notice to determine whether it complies with these resident protections.

3) **Is Withholding Payment an Option?** If a resident has a good faith dispute over a rate increase, refusing to pay the increase may be an option. The facility could then sue the resident to obtain payment or, more likely, pursue an eviction for nonpayment. However, **evictions for nonpayment are limited to failure to pay for "basic services,"** and basic services are broadly defined under California law to include living accommodations, meals, personal assistance and care, observation and supervision. (Cal. Code of Regulations, Title 22, sections 87224, 87464.) If a charge is related to a non-basic service, nonpayment should not be grounds for an eviction. The resident may still have to pay pursuant to the terms of the admission agreement, but the RCFE should not be able to evict the resident for nonpayment.

\*Unlike general rate increases, a RCFE that offers different levels/tiers of care may increase a resident's rate due to a change in the level of care by providing written notice within two business days after initially providing services at the new level of care. The notice must include a detailed explanation of the additional services to be provided at the new level of care and an itemization of the charges. Health & Safety Code section 1569.657(a).