

## Making Up For Lost Time: Addressing Problems In California's Assisted Living System

### Introduction

Across the country, assisted living facilities now house and provide services for residents with significant care needs, a noticeable change from 30 years ago when California adopted its quality standards. In response to changing resident need, most states have raised their quality standards. However, in California, the changes to the state's standards for Residential Care Facilities (RCFEs) for the Elderly (how assisted living is labeled by the state) have been relatively limited. Today's standards do not reflect the needs of today's resident population. As a result, residents, particularly seniors with limited income and resources, are at risk of receiving inadequate care as the system has not kept pace with their evolving care needs.

A conversation on this situation is long overdue. In a new project, the National Senior Citizens Law Center will be exploring the issues through a series of policy issue briefs, webinars and a policy briefing, along with multiple conversations with and among stakeholders. Included in these activities will be an examination of assisted living policy in other states. The experiences of other states can be instructive, and California should take account of those experiences.

This project is being conducted with the assistance of California Advocates for Nursing Home Reform, with financial support from the California HealthCare Foundation.

### The Needs of Assisted Living Residents Have Changed

California's RCFEs now serve a population that is very different than the population they were designed to serve almost 30 years ago, when the state's RCFE standards were first established. Laws governing RCFEs were written with the premise that residents would require limited assistance with activities of daily living and a minimal need for ongoing health care services.

In 1985, when California established its standards for RCFEs, that premise was generally true. Today, however, RCFEs commonly care for residents with high care needs — persons who in previous years would have been admitted to nursing facilities. Today's residents often require extensive assistance with activities of daily living and have chronic health care needs.

## CA's Assisted Living Regulatory System No Longer Matches Resident Needs

### 1980s

**SYSTEM ESTABLISHED IN 1985:** The Residential Care Facility for the Elderly (RCFE) regulatory system was designed nearly 30 years ago. At that time, RCFEs were developed for persons needing limited assistance with activities of daily living and Nursing Facilities (NF) were used for persons with health care needs.

### 1990s- 2000s

**RESIDENT NEEDS CHANGE DRAMATICALLY:** Seniors with significant health needs who previously lived in NFs begin living in RCFEs. Other states grapple with the changing resident landscape and update their regulations.

### TODAY

**CA HAS NOT ADDRESSED THE EVOLVING RCFE POPULATION:** Today, the distinction between the RCFE and NF population is blurred. The RCFE resident of today may be someone who would have lived in a NF 30 years ago. However, the regulatory system has failed to catch up with these changes.

**Time to Pay Attention: California's system must evolve with the needs and preferences of its seniors and families.**

The RCFE regulatory system has not changed adequately to address those increased needs. While rules have been amended to allow admission and retention of residents with greater care needs, the state's rules regarding quality of care, for example, have not kept pace.

## Other State Rules Have Addressed Resident Needs

In contrast to California, many other states have made significant changes to their assisted living regulatory systems in order to keep up better with the care needs of a changing resident population. Some of the changes, in general, allow for a melding of social and medical models of care, with the idea that a home-like environment and lifestyle is not inherently incompatible with competent health care.

Because assisted living varies from state to state, there is no one-size-fits-all solution to designing or revising an assisted living regulatory system. However, the process for revising rules should include both an honest assessment of the current system and consideration of potential changes, including the experience of other states. Some policies followed by other states may be instructive:<sup>1</sup>

- **Spectrum of Care:** California has one level of care for RCFEs. Some other states license assisted living facilities for

<sup>1</sup> Based on the report, "Best Practices in Assisted Living" by Eric Carlson and Gwen Orlowski, an analysis comparing California to 11 other states in regard to 19 different areas of assisted living policy. More information available at, [www.nscl.org/wp-content/uploads/2014/02/Final-Draft-Best-Practices-in-Assisted-Living.pdf](http://www.nscl.org/wp-content/uploads/2014/02/Final-Draft-Best-Practices-in-Assisted-Living.pdf).

different spectrums of care.<sup>2</sup> Under such a system, for example, a resident with lower care needs may live in a Level I Assisted Living Facility. A resident with higher care needs may reside in a Level II facility, which must meet more stringent quality of care standards.

- **Nursing Services and Oversight:** In California, the rules generally do not require participation by nurses, although the rules allow an “appropriately skilled professional” to be involved for residents with certain health care needs. Some other states are more systematic in requiring nurse participation in such activities such as assessment and care planning, and/or require that a facility have over-the-phone access to a nurse.<sup>3</sup>
- **Medication Administration:** In California, medication can only be administered by nurses, but most RCFEs do not have nurses. So facility staff members often assist residents with medications claiming that the staff members merely are assisting with self-administration of medication. Some other states, however, have created mechanisms to allow trained non-nurses to administer medication in assisted living facilities. For example, in Kansas, medications are administered by medication aides,<sup>4</sup> while in Washington a nurse can delegate medication administration responsibilities to a home health care aide.<sup>5</sup>

Listing of these examples from other states is not intended as an immediate endorsement of those policies for use in California. The first step for California policymakers and stakeholders is to recognize the problem and consider possible responses.

## Time for California to Assess the Dated RCFE Regulatory System

California has never adequately addressed its central assisted living problem: the disconnect between resident needs and the state’s current RCFE standards. Doing so requires that current systemic limitations be identified and confronted, and that alternatives be carefully considered.

*The National Senior Citizens Law Center “Making Up for Lost Time” project is meant to support informed discussion about possible changes to RCFE policy with assistance from the California Advocates for Nursing Home Reform and financial support from the California HealthCare Foundation.*

*This issue brief is the first in a series to initiate and then support a conversation about potential RCFE reforms. Webinars on the topic and a Fall 2014 Policy Briefing are also planned. For more information, please visit [www.nsclc.org](http://www.nsclc.org) or contact Eric Carlson ((213) 674-2813; [ecarlson@nsclc.org](mailto:ecarlson@nsclc.org)) or Fay Gordon ((510) 338-9104; [fgordon@nsclc.org](mailto:fgordon@nsclc.org)).*

<sup>2</sup> See, e.g., Code Ark. R. §§016.06.001.100, 016.06.002.100.

<sup>3</sup> See, e.g., Or. Admin. R. 411-054-0045.

<sup>4</sup> Kan. Admin. Regs. §§26-39-103, 26-41-205, 26-50-30.

<sup>5</sup> Wash. Admin. Code §§388-78A-2370-2380, 388-78A-2510.