



February 2, 2016

VIA E-MAIL

Oliver Chu
Office of Regulation Development
California Department of Social Services
744 P Street, MS 8-4-192
Sacramento, CA 95814
E-MAIL: ord@dss.ca.gov

Re: ORD #0815-10 Admission Agreements in RCFEs

Dear Mr. Chu:

6Beds, Inc. ("6Beds") appreciates the opportunity to comment on the notice of Admission Agreement Regulations (ORD #0815-10). While the proposed regulations seek to codify statutes that have gone into effect between 2002 and 2013, 6Beds finds there to be a number of instances where referenced statutes have been applied in a manner that is out of context. In addition, 6Beds has concerns about contradictory language and lack of clarity in some areas. 6Beds' concerns are as follows:

87507(b)

Proposed Regulation: "The licensee shall complete and maintain in the resident's file a Telecommunications Device Notification form (LIC 9158, ~~5/97~~ 11/04) for each resident whose pre-admission appraisal or medical assessment indicates he/she is deaf, hearing-impaired, or otherwise disabled."

6Beds Comment: Although this section was not rewritten, it contains language that creates ambiguity. While it is clear that a deaf or hearing-impaired resident should receive a Telecommunications Device Notification, it is unclear what other disabilities the Department believes call for special telecommunications devices.

Besides deafness or hearing-impairment, 6Beds would like clarity on what specific other disabilities, if any, would call for a resident to receive the Telecommunications Device Notification. If no other disability would call for a resident to receive the Telecommunications Device Notification, then 6Beds recommends that "or otherwise disabled" be deleted from the regulation text.

87507(c)

Proposed Regulation: “Admission Such agreements shall be ~~dated~~ signed and ~~signed~~ dated, acknowledging the contents of the document, by the resident ~~and or~~ the resident’s representative, if any, ~~responsible person or conservator~~ and the licensee or the licensee’s designated representative no later than seven days following admission. Attachments to the agreement may be utilized as long as they are also ~~dated~~ signed and ~~signed~~ dated as prescribed above.”

6Beds Comment: The second sentence of the proposed regulation misapplies H&S Section 1569.887(b), which is the statute section it is seeking to codify. H&S Section 1569.887(b) requires all *subsequent* (emphasis added) modifications to be signed and dated, but not all attachments to the Admission Agreement. Only post-admission modifications must be signed and dated. Therefore, attachments to the Admission Agreement do not qualify as subsequent modifications and are not required to signed and dated separately. Rather, attachments at the time of admission must be referenced and included in the Admission Agreement. It is only the Admission Agreement itself that must be signed and dated.

6Beds recommends changing the sentence to clarify that attachments to the Admission Agreement must be referenced and included with the Admission Agreement, but not signed and dated separately.

87507(d)

Proposed Regulation: “The licensee shall retain in the resident’s file the original of the initial signed and dated admission agreement and all subsequent signed and dated modifications.”

6Beds Comment: The second half of this sentence requires that *all* (emphasis added) subsequent modifications to the admission agreement are signed and dated. However, RCFE licensees have the right to modify the fee schedule without resident approval. Therefore, a modified version of the fee schedule would not need to be signed by the resident and maintained in his/her file.

6Beds recommends clarifying that this section does not apply to modified fee schedules.

87507(f)

Proposed Regulation: “The licensee shall comply with all terms and conditions set forth in the admission agreement. ~~No written or oral contract with any other person shall release the licensee from responsibility for the provision of safe and healthful facilities, equipment, and accommodations.~~”

6Beds Comment: The wording of the proposed regulation should be modified so that it is consistent with its intention, which is to ensure licensee compliance with promises made by the licensee. The admission agreement is a two-party agreement, wherein each party makes promises to the other. For example, the resident promises to pay for services provided. As such, it cannot be expected that the licensee comply with *all* (emphasis added) terms.

6Beds suggests clarifying that the licensee must comply only with terms and conditions which apply to the licensee.

87507(g)(3)(A)(1)

Proposed Regulation: “All basic services charges shall be listed, even if the basic services are charged under a fixed monthly fee.”

6Beds Comment: Currently, there are many CCLD-approved admission agreements that list services charged under a fixed monthly fee. The proposed regulation could create significant confusion in that it may be construed that the regulation would require licensees to list an individual amount charged for each basic service provided under a single fixed monthly fee. If there is a fixed monthly fee that covers all or some of the basic services, then how is a licensee to list all basic service charges?

6Beds recommends that the proposed regulation be modified to clarify that what is required to be listed are all basic services, not their charges, that are included in a fixed monthly fee. As such, the word “charges” should be deleted.

87507(g)(3)(B)(4)

Proposed Regulation: “A statement acknowledging the acceptance or refusal to purchase optional services, which shall be signed and dated by the resident or the resident’s representative, if any, shall be attached to the admission agreement.”

6Beds Comment: The proposed regulation misapplies H&S Section 1569.884, which requires that residents acknowledge the acceptance or refusal of a *new* service that was not originally available at the time the admission agreement was signed. Instead, the proposed regulation would require residents to accept or refuse the optional services that are available at the time of admission. It is impractical to require residents to accept or refuse the optional services that are available at the time of admission given that residents’ needs or desires to use an optional service may arise post-admission.

6Beds recommends that the proposed regulation be modified to appropriately reflect that a statement acknowledging the acceptance or refusal to purchase an optional service only be required for services that were not originally available at the time the admission agreement was signed.

87507(g)(3)(F)

Proposed Regulation: The admission agreement must include payment provisions including the “[f]unding source, provide that the resident may refuse to disclose such source.”

6Beds Comment: Although this regulation is not a new requirement, it presents practical challenges. Many small-home RCFEs serving six or fewer persons accept residents on SSI/SSP. There are also regulations that pertain specifically to residents on SSI/SSP. For example, the proposed regulation found at 87507(g)(3)(C)(3) states that SSI/SSP residents shall not be required to pay any form of preadmission fee. If licensees are not allowed to know whether a resident is on SSI/SSP, they are not given a fair opportunity to stay in compliance with regulations that apply specifically to SSI/SSP residents.

6Beds recommends that this proposed regulation be deleted.

87507(g)(3)(H)

Proposed Regulation: The admission agreement must include payment provisions including “[a]n itemized monthly statement that lists all separate charges incurred by the resident shall be provided to the resident or the resident’s representative, if any.”

6Beds Comment: The proposed regulation misapplies H&S Section 1569.884 in that it would inappropriately require the inclusion of an itemized monthly statement in the original admission agreement, whereas H&S Section 1569.884 requires that the admission agreement *indicate* (emphasis added) that the resident shall receive a monthly statement itemizing all separate charges, if any, incurred by the resident. In addition, the phrase “all separate charges” may be misconstrued and pose practical challenges to licensees. For example, it would be impractical for a licensee to provide residents with a monthly statement itemizing charges that are optional services provided by third parties that have separate fee-for-service arrangements with residents.

6Beds recommends that the proposed regulation be modified to (1) reflect that the admission agreement shall *indicate* that the resident shall receive a monthly statement itemizing all separate charges, if any, incurred by the resident and (2) clarify that “all separate charges” refer only to those separate charges that are assessed by the facility.

87507(g)(5)(B)(1)

Proposed Regulation: The licensee shall refund any prepaid monthly fees to a resident or the resident’s representative, if any, as follows: 1. If a licensee forfeits the license upon the sale or transfer of the facility, the licensee surrenders the license, or the licensee abandons the facility.

6Beds Comment: The phrase “If a licensee forfeits the license upon the sale or transfer of the facility” is confusing. Is the proposed regulation implying that a licensee has to refund prepaid monthly fees to residents in the event of a transaction where the facility is sold or transferred, but continues to stay in operation?

6Beds recommends clarifying what is meant by the aforementioned phrase and how it would be applied in practice. A sale or transfer of a facility where the facility continues to

operate should not cause the licensee to have to refund any prepaid monthly fees to residents. The same aforementioned phrase is also used in 87507(g)(5)(D)(3)(a) in the context of preadmission fees and 6Beds has the same concerns there.

87505(g)(5)(C)

Proposed Regulation: "A refund of any prepaid monthly fees shall be given if the resident provides notice five days before the resident leaves the facility. The refund shall be a proportional daily amount of any prepaid monthly fee(s), and shall be refunded at the time the resident leaves the facility and the unit is vacated."

6Beds Comment: The proposed regulation misapplies H&S Section 1569.682, which references a resident receiving a refund upon the resident's leaving the facility after a five day notice *only* in the context of a forfeiture of license or change of use of the facility. Instead, the proposed regulation would allow a resident to provide a five day notice and obtain a refund of any prepaid fees beyond the five days under any and all circumstances. However, under circumstances outside of forfeiture of license or change of use of the facility, residents must provide a 30 day notice.

6Beds recommends that the proposed regulation be modified to reflect that the five day notice and corresponding refund applies *only* in the event of forfeiture of license or change of use of the facility.

Thank you for the opportunity to comment on these proposed regulations related to admission agreements. If you have any questions about our comments, please feel free to contact me at (559) 284-1597.

Respectfully,



George K. Kutnerian
Director & Co-Chair, Legislative Committee
6Beds, Inc.