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Defending California's Facility Residents from Evictions: Protections for People Living in Residential Care Facilities for the Elderly

Webinar Transcript

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Patti Prunhuber:

Good morning and welcome to today's webinar, Defending California's Facility Residents from Evictions Protections for people living in residential care facilities for the Elderly adult residential facilities and similar licensed facilities. We'll get started in just one minute, and as soon as you arrive you can put any questions that you have in the Q&A.

Good morning everyone. Welcome to today's webinar, Defending California's Licensed Facility, Residents from Eviction. My name is Patti Prunhuber. I am the director of Housing Advocacy at Justice In Aging, and I'm joined this morning by Eric Carlson, who's the director of long-term services and supports also at Justice In Aging. I'm going to go through a few housekeeping items. You can put any questions you have in the Q&A and we will try to get to as many of those questions as we can at the end of this webinar. We'll save about 15 minutes at the end. For those of you who are looking to get CLE credit, credit is available for this webinar. You can request one hour of CLE credit by filling out the survey that will be sent to you after this webinar and completing it with your name, email address, and bar number. For those of you who are not attorneys, you obviously don't need to put the bar number. And that is California CLE credit.

We are running this webinar today because there are more than 245,000 older and disabled Californians who make their homes in a wide range of licensed facilities that provide housing along some level of care and supervision. These settings include residential care facilities for the elderly or RCFE's, adult residential facilities known as ARFs or ARF and similar licensed facilities. We will not be discussing rules that apply in skilled nursing facilities or nursing homes. RCFEs are housing arrangements occupied by persons who are generally age 60 and older and who require some kind of assistance, particularly for aspects of their personal care such as bathing, dressing, eating toileting, as well as preparing food, doing laundry, money management and assistance with taking

medications. RCFEs are regulated by the California Residential Care Facilities for the Elderly Act Health and Safety Code sections 1569 and following, and by a regulatory structure that we'll go into in this webinar.

These individuals have made their homes in these community residences because they need some assistance but not so high as to need nursing home level of care in general. Yet they face a high risk of unlawful eviction transfer or discharge. Representing individuals who are subject to losing their housing has not traditionally been seen as a core part of eviction defense. Yet senior legal advocates and housing attorneys can play an important role in keeping people housed by learning the ins and outs of how California's eviction procedures interact with federal and state regulations and statutes specific to these facilities.

I'm going to now do some housekeeping. First, I'd like to introduce you to Justice In Aging. We are a national organization that uses the power of law to fight senior poverty by securing access to affordable healthcare, housing, economic security in the courts for older adults with limited resources. We have focused our efforts primarily on fighting for people who have been marginalized or excluded from justice. That includes women, people of color, LGBTQ+ individuals, people with limited English proficiency, and people who are at risk of institutionalization.

You will all be on mute. You can use the Q&A function for substantive questions or technical concerns. There's a link here if you're having problems getting on the webinar, you can email us. The materials for this training and for past trainings are found on the Justice In Aging resource library and the link to that is available and we will put it again in the chat and we will also post a recording of this webinar on our Vimeo page at the conclusion of this presentation. Closed captioning is available if you go onto your zoom screen, there is a CC from the Zoom control panel that you can click on. This mistakenly says that 1.25 hours of continuing legal education will be available. It's actually one hour of California continuing legal education.

Justice In Aging has a commitment to advancing equity and what that means for our organization is that we must advance equity for low income older adults in all of the areas that we work in. We must address the enduring harms and inequities caused by systemic racism and other forms of discrimination that uniquely impact low income older adults in marginalized communities, and we must internally recruit support and retain a diverse staff and board in all areas.

If you would like to receive our newsletter or trainings and materials, you can go to justiceinaging.org and hit Sign Up or send us an email to info at [justiceinaging.org](mailto:info@justiceinaging.org). There is also a link at justiceinaging.org to submit questions or case consultations.

So today we're going to cover just the general landscape of these facilities that are licensed facilities in California and the different range of protections and responsibilities that licensees have. We're going to give you a summary of the law and special protections for residents who are in facilities that are funded in whole or in part by the Medi-Cal program and I will give you greater detail about that.

We're going to try to cover some strategies and advocacy tips to counter eviction actions that are being taken against residents and we will have time left at the end for a Q&A. So I'd like to begin with a poll question. If you could answer this question and the question is, how familiar are you with eviction processes in any kinds of licensed residential settings? And there are three choices. I'll give you a minute to answer and then we'll look at the results.

Okay, I'm going to close the poll. All right, so it looks like the majority have never had a client. Thank you for coming to this webinar. We hope that we can encourage you to engage in this work. It's really important. And about 17% have advised or represented somebody in one to three cases and 19% in more than three cases. Thank you. And now I'm going to turn it over to Eric Carlson.

Eric Carlson: Thanks Patti. Could we move the slides forward please? I'm just going to start by giving a brief introduction to the licensed facilities.

Patti Prunhuber: Sorry.

Eric Carlson: Like Patti said, we're not talking about nursing facilities. What we're talking about are the facilities licensed by the Department of Social Services.

Patti Prunhuber: I'm sorry, I'm having a little difficulty.

Eric Carlson: That's fine.

We're not doing the nursing facilities. Those are under Department of Healthcare Services or Public Health, but then it's Department of Social Services that licensed the residential care facilities for the elderly and the adult residential facilities as we'll talk about this distinction isn't exactly right. You could think about it as healthcare versus non-healthcare, but as we'll discuss, the non-healthcare facilities have a fair amount of healthcare wound through them at this point. As you can see, there's a lot of these facilities. There's a high number, so we're talking about a lot of people, a lot of Californians, a lot of residents in these facilities, close to 100,000 people in each of the residential care facilities for the elderly and the adult residential facilities. Just note that in the distribution here, the average might be about 20 residents per facility, but as a practical matter, the majority of the facilities are small.

The law at this point allows for any facility with six residents or fewer to be licensed to be zoned, rather, as a residential use. And so the majority of the

facilities are those small facilities, but the majority of the residents actually are in large facilities because of course if you've got 100 people in one facility that balances out against or more than balances out against a large handful of six bed facilities. Can we move forward a couple slides please, Patti, if that's possible?

And to talk about the distinction I'll just mention, skip forward one more please. This is the point I mentioned earlier that this distinction between healthcare and non-healthcare, it's less and less true. If you look at residential care facilities for the elderly. Like Patti said, these are older folks, they're getting room and board, they're getting assistance with activities of daily living. That's why they're in these facilities to begin with because they need help.

But these are not by large "board and care facility". Sometimes that's tossed around as a non-technical term. Really not correct because people need much more than just that kind of casual level of assistance. They oftentimes need heavy hands-on assistance and increasingly they need some level of quasi healthcare that these facilities were first devised several decades ago. And the initial intent was that they'd be just "non-medical facilities". But as the years go on, this is true across the country, these types of facilities have been modified to admit and retain people with some significant needs because the licensees, the owners of these facilities want to keep people. They don't want to generally be forced to have these people pick up and move elsewhere. And oftentimes residents want to stay there as well. They legitimately would say, "Well, why should I be forced to move to a nursing facility just because I need a little assistance with this, that or the other thing?"

So because of that, you can get termed incidental medical assistance provided through appropriately skilled professionals, nurses or home health agencies. And there's some allowances in the state regulations and the statute and the health and safety code to make that happen. But it's not a perfectly rational system. I can say that a lot of states have done a better job than California has about figuring out the specifics of this and weaving in healthcare in a more comprehensive way.

From evictions concerns, we could say that the laws are similar in all these different levels. The adult residential facilities and the RCFEs. These facilities listed here are other DSS licensed facilities. There are some similarities to the adult residential facilities and the RCFEs, but they're not identical. The majority of the presentation today will be focused on the residential care facilities for the elderly and a lot of that will apply also to the adult residential facilities because the licensing rules, rather the eviction rules, are extremely similar.

You can go forward please. And just talk a little bit about the reality here in the eviction defense world or in the world of these facilities. In the legal services world I think most people on this webinar can probably understand that residents are, the defendants here, in a poor position. They oftentimes feel

intimidated, without resources. That is particularly true for residents of these facilities. It's an unfamiliar world to them. These are folks who haven't known anything about these facilities, found themselves in these facilities because of a need that they didn't necessarily plan for. And they're oftentimes very much unaware of what their legal rights may be and very much unaware of the resources that may be available for them. So I have found in doing this work for long-term care facility residents, that it's extremely important for advocates to get the word out there.

You can't just be in your office and wait for to phone to ring necessarily because it may not ring. And then when you're talking to people, you not only are representing them but also giving them some sense of hope that there are options that even though they're living in a facility and they feel pressure from the people around them who are both the plaintiffs and their caregivers, that they have options and that if they utilize those options, they may well win. So with that, I'll pass the microphone over to Patti a bit to talk about some of the specifics.

Patti Prunhuber:

Thank you very much Eric. I want to begin by moving the slide and talk about what are the permitted reasons for an eviction from an RCFE? And there are only five and they are the failure to pay the agreed upon rate for basic services within 10 days of the due date. This one is fairly straightforward, but often facility operators assume that they can also move to evict for failure to pay for additional services. They can, but they can't use that 10 days. That's not a basis for eviction. They could withdraw the services.

So you really want to look at the admission agreement and see what is listed as a basic service and what is listed as an extra or additional service. And that admission agreement is supposed to break out each of those separately. Failure to comply with state or local law after getting written notice of a violation. And we'll talk later about whether in certain circumstances you can avail yourself of California's stronger protections under the Tenant Protection Act around the right to cure. Failure to follow the facility's rules which in order to evict for that reason, they must be written rules. They must be provided to the person and their responsible party at the time of admission and agreed to and they must be reasonable.

And then this fourth one is the one that Eric has been alluding to, which is you may need additional services after you have been there for some time and the facility may decide that they can't meet those needs, but that is subject to a lot of challenge because it may be that they could meet those needs. It may be that the person can ask for a reasonable accommodation because disability law applies in these facilities as well.

And then the final reason is that the facility is changing its purpose and this comes up I think a little less commonly, but they're no longer going to be a residential care for the elderly.

And you may notice that all of these notice requirements and the timing of the notices is all laid out in the health and safety code at 1569.683 and also in Title XXII regulations. And there are links to all of those. At the end of this webinar slide presentation, you'll see hyperlinks to these statutes and regulations.

So the notice itself, and this is directly from the statute, "Shall set forth the reasons relied upon for the eviction with specific facts to permit determination of the date place witnesses and circumstances concerning those reasons. And in addition, the notice must state the effective date of the eviction, the resources to find alternative housing and care, the right to file a complaint with both the Department of Social Services licensing division and also with the state ombuds program. The facility's obligation to file an unlawful detainer action before evicting and a right to a court hearing to contest that eviction.

This last one about the unlawful detainer is very important and what is most important is that somebody asserts that right by not leaving. I think most cases are resolved by the person feeling pressured or under duress to leave and it never reaches a court hearing. And they must also notify or mail notice to the resident's responsible person. There's a little bit of ambiguity about when that notice must be sent to the resident's responsible person, but it obviously must be in time for them to be able to meaningfully engage in contesting the reasons given in the notice.

So what are the time requirements for the notices? Generally it's a 30-day notice, but if the facility is closing, that last reason that was given, it is 60 days. And arguably it is also 60 days for people who have lived there for one year or more. And that is bringing in the notice periods that are in the Tenant Protection Act. We'll talk later about the Tenant Protection Act and when it applies. But this is one place where there's a good argument that a person who has been there more than one year is entitled to that 60 days.

And then there's this very short notice period which requires prior approval from the Department of Social Services licensing division upon a showing of good cause. And good cause is meant to be that there's sort of an imminent threat to the health and safety of either the resident or other residents or staff. So it should be used in very limited circumstances. And of course in any situation where the resident's behavior is arguably causing the good cause, there's an obligation to look to see if this person's disability can be accommodated by removing that threat, by providing additional behavioral health services by changing where in the facility they're living. But all of the disability advocacy that you do in other housing settings would be applicable here.

So 60 days advance notice when the facility is closing would be if they lose their license, which does happen or they change their use or they just go out of business. In addition to the regular notice contents that we went over before, you have to have an up-to-date resident service plan that will facilitate them

going to another location, a relocation evaluation and plan, contact information for the long-term care ombudsman and a discussion of relocation evaluation with the resident and or their responsible party within 30 days of the eviction notice. And during that 60-day period that they're planning to close or change use, they can't accept any new residents or sign agreements to admit, and that's to make sure that they're not moving people out to move perhaps a more profitable population in.

So the three-day notice, which requires the Department of Social Services to give prior approval is supposed to be a very high standard that the resident's behavior is threatening the health or safety of themselves or others in the facility. And again, even though there's a three-day notice, a very short notice, it's still subject to eviction procedures if the person chooses not to leave or contests that finding. And this is where I'm referring to the California Civil Code, the Tenant Protection Act says that tenants who have resided in their place, that they live in their residential dwelling, which these facilities are, if they've resided there for one year or more, that they're entitled to 60-day notice. There's at least one unreported case that has found that this applies to assisted living or to RCFEs, and I think it's somewhat of an unsettled claim, but I think it's worth thinking about if the notice hasn't given enough time. And if you have a case that comes up like this, I encourage you to reach out to one of us at Justice In Aging.

So now we're going to talk about some federal eviction protections. These don't apply to everyone that we've been talking about thus far. So of the 245,000 individuals who live in one of these licensed facilities, there's about 12,000 who are receiving federally funded Medicaid services in these facilities. So about 5% of all residents. And back in 2014, the federal Medicaid office, CMS, published a rule called the Home and Community-Based Service Settings Rule. And it was trying to ensure that where Medicaid home and community-based services were being provided to consumers, that they received those services in settings that are truly non-institutional think Advancing Olmstead Principles, which is that you get to live in the most integrated community setting possible and that these should not be run like institutions.

As I mentioned, the rule was initially published in 2014, states had until 2017 to issue a plan and 2022 to come into compliance. And then there was a little stretching of that due to COVID and the date that they had to come into compliance was reset to March 17th, 2023 unless they received an extension. So California has created a plan and it applies in these RCFE settings where the residents are receiving Medicaid funded services. And they apply where your landlord is also your service provider and providing those essential healthcare services. And what it says is that you must be provided protections that are either available under your state, county or city's landlord tenant law or have comparable rights to state or local landlord tenant eviction law and that those comparable rights are described and written into your lease resident agreement or other written agreement and I'm giving you the federal citation there.

So it's really worth looking at this federal regulation because it really provides the most robust protections, eviction protections and processes and appeals.

In California what that would look like is the first question is are RCFEs covered under our state landlord tenant law? Well, the answer's a little complicated. They are exempt under the just cause provisions of the Tenant Protection Act, and I've given you that exception that exists in the California Civil Code. But other Tenant Protection Act provisions do apply to RCFEs and there is no exemption. I'll point out that many RCFEs and their association disagree with this interpretation. They think the Tenant Protection Act never applies. But what the federal rule says is if they don't apply, you have to create comparable protections. And if they do apply, then you get to use them. So the other TPA provisions that apply would be the rent cap that exists for properties that are not occupied within the last 15 years or otherwise exempt, that you must be sent a written notice at the beginning of the tenancy if the landlord, the licensee in this case, is claiming an exemption from the TPA, that if the eviction is for no fault reasons like their closing or your service needs changed, that they have to give you relocation assistance.

So there are many provisions of the TPA and those of you on this webinar who are housing attorneys can think about how you might apply some of those TPA eviction protections and other protections that exist both in the civil code and in other state and federal laws such as the provision against retaliatory evictions, the provision that discrimination law applies and other provisions that protect tenants including very specific requirements in unlawful detainer actions to have notice properly served and with the right amount of time. And the notice has the specificity that's required to proceed under the civil code. All of those protections are now imported in through this federal settings rule.

So here's some examples of what might be comparable eviction protections or processes. I mentioned the 60 days notice for those whose residence is greater than one year. Just cause if the breach, if there's an alleged violation, it has to be of a material term of the lease that's from the TPA and you must be given very specific notice, perhaps even more specific notice than the health and safety code lays out. And most importantly, the right to cure. One month relocation benefits for non-fault evictions. And then you also get the ability to incorporate local ordinances that might provide stronger protections, longer notice periods right to counsel. And these are supposed to be listed in the written agreement that the resident signs with the operator of the RCFE.

The state believes that it is that compliant with the HCBS settings rule. And what I would say is that the facilities are asked to sign something saying they're in compliance with the HCBS settings federal requirements, and they're supposed to submit a copy of their standard lease agreement, but it's not clear that they are submitting the copies. It's not clear that anybody is reviewing those copies to see if they comply.

So now we're going to turn to some advocacy tips and strategies, and I'm sure many of you have your own examples of advocacy tips and strategies. Feel free to put them in the Q&A, but Eric and I will just sort of talk about some general ones that apply in most cases. I can't say it enough or loudly enough if you can get there in time to encourage the resident to not move out. This is a case where possession is nine-tenths of the law. And if the person resides there and doesn't leave, that is probably the most important defense that they can assert. They often feel compelled to leave, but if they don't have not just a place to go but kind of a better place to go, it's really important that they not leave and they don't have to leave no matter what is said to them. The burden is on the facility licensee to file the notice and then proceed with the notice, provide the information that is in their record to support the eviction or transfer and to file an unlawful detainer action before they evict.

And only, as you know, a court of law can determine that the eviction should go forward and a judgment is entered. You have a right to file an answer and request discovery and a trial. You have a right to file affirmative defenses, some of the ones that we mentioned, including reasonable accommodation. And it is absolutely unlawful for an RCFE licensee to engage in an illegal lockout, to change the locks or to not let them return after they go visit somebody or in the hospital for a short period. So it's very important that the protections that tenants have are being applied to facility residents. Eric, did you want to add anything?

Eric Carlson:

Yeah, excuse me. What I would add would just be a comment about the most common type of RCFE eviction. How do these play out in real life? There's two common justifications cited from the ones that Patti cited earlier. One is non-payment and the second one is we cannot meet your needs. Your needs have changed beyond the facility's supposed capacity to address them. And that's what I want to talk about.

It's a little bit tricky here because the level of "care" in RCFEs is a bit fluid and facilities oftentimes see this as something that is a one-way street that they can provide more care if they feel like it. But if they don't want to do it, then they don't have to. And that is incorrect as a matter of law. So when you get these situations, what you want to do is to look at the regulations in Title XXII and recognize the facility's ability to, for example, accommodate greater needs, whether it be healthcare related or not. Because facilities will try to define themselves as, oh, we are not the kind of facility that does this and that, and that's not true. They have the opportunity to do so under the state law and Patti referenced the ADA earlier, there is this obligation to accommodate. And so the residents rather should be really clear about asserting that saying, this is the need. I want you to meet this need and you have a legal obligation to do so.

Patti Prunhuber:

Thank you. And I probably should have mentioned that when we look at the HCBS settings rule and those federal protections, the people who are getting those extra services that even look like healthcare services and might even rise

to the level of skilled nursing facility services are people who are getting services under what's called the Assisted Living Waiver in California or ALW. And if a facility is providing ALW services, if another resident needs additional services, that is one thing they could be asked to do is to facilitate an application for assisted living waiver services in order to meet their higher needs.

Eric Carlson:

Can I just jump in for a second Patti? And I think just again to emphasize it's just very fluid. The point just Patti made illustrates that. These waiver facilities under the Medi-Cal rules under the Federal Medicaid rules are providing care to people who are deemed to need the equivalent of nursing facility care, but they're receiving that care in a residential care facility for the elderly. And those facilities are not licensed any different than any other residential care facility for the elderly. It is extremely fluid. And just to re-emphasize the point, it's important that residents don't let that be a one-way street, that facilities have the ability to do that and they should do that. And then just one other practical matter, I think that the argument thought from the resident might be, well if they're saying they can't meet their needs, maybe they can't meet their needs, maybe that's not the place I should be.

And I think the lawyer, the advocate of this case, has to recognize that issue but not be bulldozed by it either. Ultimately it's the client's decision, but it is fair to require the facility to do its job and in representing residents in these facilities, you don't want to be driven from place to place by people saying, "Well, we can't can't meet your needs. We're going to do a poor job. And so isn't it best if you leave?" Sometimes the thing to do is to take a stand and to say, "You have to meet my need. You have to do that. You're legally obligated to do that and I'm going to expect you to do that."

And again, I recognize it's easier for me to say that as the advocate than it is for the resident because I'm not living in the facility. But we have a lot of experience with these issues and I think oftentimes residents are better off by standing up for themselves. They do better in that way rather than keeping quiet and accepting inadequate services over and over again.

Patti Prunhuber:

So here's just some basic things that can help. Make sure that you look at the admissions agreement. Does it state the local and state eviction protections that are available? At the end of this, one of the links is to Attachment X, which is something that the Department of Healthcare Services has issued, which are provisions in state landlord tenant law or rights of tenants in California that should be respected in the agreement. Unfortunately it doesn't say incorporated, it just says should not be modified or waived. But obviously you want to look at the notice that was sent telling them that they must leave the premises and make sure that it is adequate and specific, the proof of service both to the individual and some indication of how the responsible party was served. This is particularly important where the person has some level of cognitive impairment and the responsible party is taking a more active role.

You want to look at all the witness statements and other evidence to support the alleged violation. There is an absolute right to review the resident file and all those statements and evidence should be in the resident file. And then this really goes to Eric's point that any medical assessments and reappraisals that were done, that's very important. And if you want to have an independent medical assessment by the person's own physician, you are entitled to do that and submit that because there could be a disagreement about how much help they need. So those are just some quick documents that can be helpful. Did you have anything you wanted to add to that, Eric?

Eric Carlson: No. Thanks, Patti.

Patti Prunhuber: Okay. So the final thing I wanted to say about this is Eric alluded to the fact that these cases don't walk in the door. And so one of the things that I think is really helpful is for you to be able to have a good working relationship with your local long-term Care Ombuds program, your Elder Legal Services, Statewide CANHR, the California Association of Nursing Home Reform, often has access to information about people who are facing evictions. And I encourage you to think about taking these cases as important to housing and avoiding homelessness as all of the other really important eviction defense work that we do.

So now we have quite a few questions in the Q&A, so I'm going to start taking some of them. Let's see.

Eric Carlson: So Patti, I can jump in and do the top one.

Patti Prunhuber: Great.

Eric Carlson: The question is how do we find a list of licensed and unlicensed facilities in the county and the state? So for licensed facilities, department of Social Services Community Care, Licensing, they have what they call a transparency website. It's got a button that says find a facility. So if you type those words into Google, it's DSS CCL, find a facility or transparency website, it comes right up. And you can search via classification to see if something's a residential care facility for the elderly or an adult residential facility. The question also references unlicensed facilities. By definition, there's no list because they're unlicensed and so there's not a list from the state.

It's worth a mention there. I encourage people to report facilities that are, you don't need a license if you're not providing care and supervision, but you do need a license if you are providing care and supervision. It's an unlawful business practice. It's a violation of state law. I certainly know facilities that operate under the table and it seems to just go on sometimes. They're generally picking on people who don't have any other options. It's really in my mind, a bad situation. So I encourage people to refer those people to licensing or to the city attorney because it's not good for those facilities to operate in the shadows

like that. And the people who suffer because of that are often the most vulnerable people without many resources and who may be separated from family and friends for one reason or another.

Patti Prunhuber: And that does play into the second part of that question, which is if you suspect abuse, who would you recommend reporting abuse to especially if you're having problems with adult protective services saying that they don't have jurisdiction?

Eric Carlson: If we're talking about a licensed facility, I do think ideally it's a criminal prosecution. I know that licensing has some, yeah, I think it's ideally it's a criminal prosecution. Because I understand the jurisdictional issues there. What do you do if a facility is unlicensed? You threaten to take their license away from them. Well, they say, "Fine, we don't want your license", slam the door in your face. So ideally it's a prosecutorial decision. It is defined as an unlawful business practice in the health and safety code.

Patti Prunhuber: And if it is a licensed facility, in that case, licensing is supposed to investigate cases of suspected abuse or neglect and there is a complaint filing on the licensing website and depending upon the severity of what's happening, they are supposed to come to the facility and investigate quite quickly. But if you're not getting enough traction from that, then obviously law enforcement is your backup.

The next question is, are there special protections for folks in RCFEs who display symptoms of mental or behavioral disability? And I guess I would say that that is going to be a very common situation and that the certification that people who work in licensed facilities get is supposed to cover how to work with people with mental health issues or behavioral disabilities. The ADA is certainly applicable and to the extent that you're looking for additional services to keep that person safe and able to reside there, that would be in the form of I think a request for a reasonable accommodation.

So I think it depends on what you're looking for. If you're looking for a protection from eviction, that would be a reasonable accommodation request. If you're looking for additional services to come in, that could be through assisted living waiver depending on the severity of their disability. And so it's a little hard to answer that in a general way. But certainly people do reside in RCFEs who have mental health or behavioral disabilities, and that is not a reason to be evicted unless it rises to that level, that threat to health or safety of the person or others.

There's a question about what are the different sources of revenue that fund RCFEs? Well, the people who live there who receive SSI, supplemental security income, they are paid through what's called the non-medical out of home care rate, which frankly is not enough to cover the cost of their care. It's somewhere upwards of \$1,200 a month for 24-hours of care and supervision. Many people are private pay. And then there is also the funding that comes from these

waiver programs that supplement not the room and board, but the services through the assisted living waiver. And that can add quite a bit up to several thousand a month for the individual depending upon their care needs.

There's a question here about a six bed RCFE. Do they have to apply for or accept medical insurance such as Medi-Cal or Medicare? I think it's important to remember that these RCFEs, whether it's a six bed or a larger one, are not considered medical facilities. So other than the waiver that I've mentioned, Medi-Cal is not going to be paying for their care provided in that facility. And the same with Medicare. Their Part B would cover their doctor's visits and people leave the RCFE to get their medical care or perhaps a doctor comes in. But it is not generally covered under Medi-Cal or Medicare with the exception of the waiver programs. Did you want to add anything to that, Eric?

Eric Carlson: Yeah, I'll just mention Medicare is relevant only in the facilities itself to the extent that it may reimburse home health or hospice services, but as you point out, it's not paying for the facility services themselves.

Patti Prunhuber: Right. So in a previous slide I mentioned that one of the reasons for eviction, the third reason for eviction that's permitted under the rules is that a person has violated the agreed upon reasonable rules of the facility. And the question is, can the facility change those agreed upon rules at a later date and then compel the resident to agree or sign to the changes? Are the changes reasonable? They certainly have the option to refuse to sign those agreed upon changes, and that could be a basis for the facility moving forward to evict. But I guess the question is why are they changing? What's the reason? And does it look at all like a retaliatory eviction? Do you have other thoughts on that, Eric?

Eric Carlson: Maybe on the margins. It talks about facility rules that the facility rules have to be in writing, but I agree with you Patti. I think it's more about reasonableness and in a sense of retaliation than it is whether somebody's signed for it or not. For what it's worth as a practical matter, I don't see as much historically, I don't know if there's been a lot of manipulation on these rules as a grounds for eviction. It seems as a practical matter that the action is more on these allegations that we can't meet your needs anymore. Sorry to just elaborate that way, but agree with you generally that it would be about somehow showing unreasonableness or some intent to target a particular resident.

Patti Prunhuber: And I'm going to take this as our last question because it's really a comment and it's very true that facilities will sometimes use an incentive to the resident that they want to get rid of saying they'll pay for a hotel for a few days if they'll leave voluntarily. And that residents feel so unwelcome that they'll take this option without thinking it through very well. I think that's an observation more than a question. The really key thing here I think, is that they don't have to leave. And reaching that resident and helping them think out what their long-term plan is before they take that option is really important. And maybe if there's a threat or

duress, you could call it an illegal lockout, but you're going to have a much muddier factual scenario than if they just stay put.

I think that's all we have time for. These have been great questions. We will try to answer perhaps after the webinar if we have any answers to the remaining questions. And I really thank you all for attending this training. And if you do want to get California CLE credit, you can go back to when you get the survey and make sure that you fill it out and request it.

And I'll just mention that we have a list of resources here that include the eviction notice and regulations and some materials that Eric has put together on how to defend evictions from Medicaid funded assisted living facilities. And these are nationwide materials, so look for what's specific to California. Thank you very much for joining us, and please do fill out your survey.