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5510 Trabuco Road · Irvine · CA · 92620 · (949)788-1790 · [www.wrotenlaw.com](http://www.wrotenlaw.com)

## **A NEW YEAR'S RESOLUTION FOR ASSISTED LIVING FACILITIES** **Implementation of Additional Training Requirements**

by: Lora A. Ajello

With the end of the final quarter approaching, including all of the staff holiday celebrations, endless amounts of desserts and gift giving, it is time again to begin looking ahead towards next year and what changes we can and must take. Two important new bills as part of the co-called "RCFE Reform Act of 2014" go into effect on January 1, 2016 after being signed into law last year that impact Residential Care Facilities for the Elderly (RCFEs): AB 1570 and its companion bill, SB 911. These bills, and the resulting new law, significantly increase assisted living staff and administrator training and boost the degree of difficulty for the administrator exam. Both training and testing will be more comprehensive with the hopes that it will result in enhanced care for residents.

AB 1570 and SB 911 have now amended Health and Safety Code section 1569.23 and section 1569.625 to require the certification program for a prospective Administrator to consist of 100 hours of course work and a state-administered exam of no less than 100 questions. The current law requires an Administrator of an RCFE to successfully complete a department-approved certification program prior to employment that requires, among other things, a minimum of 40 hours of classroom instruction on a uniform core of knowledge. Starting on January 1, 2016, the minimum hours of classroom instruction for Administrators jumps to 80 hours, including 60 hours of in-person instruction, and would add additional topics to the uniform core of knowledge, including the adverse effects of psychotropic drugs for use in controlling the behavior of persons with dementia.

Further, beginning on January 1, 2016, RCFE direct care staff (defined as staff members of residential care facilities for the elderly who assist residents with personal activities of daily living as well as CNAs, RNs, and LPNs) must receive 40 hours of training before working independently with residents, and an additional 12 hours annually for in-servicing. The training must include topics related to physical limitations and the needs of the elderly, techniques for personal care, Residents' rights, policies and procedures regarding medications, psychological needs of the elderly, building safety, the use and misuse of antipsychotics, special needs for residents with dementia and Alzheimer's as well as cultural competency and sensitivity. This is a huge increase in training requirements as prior to January 1, 2016, direct care staff are only required to receive 10 hours of training within the first four weeks of employment, meaning on-the-job training. Further, required training hour topics have not previously included the use and misuse of antipsychotics, special needs for residents with dementia and Alzheimer's as well as cultural competency and sensitivity.

Finally, all RCFE caregivers must receive dementia care training, regardless if the RCFE promotes or advertises a memory care unit or any special programs related to the residents with dementia. This training is in addition to the increased requirements laid out in section 1569.625. Starting January 1, section 1569.626 requires 12 hours of dementia care training, six of which must be completed prior to the staff member being able to work independently with residents and the remaining six hours must be completed within the first four weeks of employment. The Code is very clear: beginning on January 1, 2016, all 12 hours must be devoted to the care of persons with dementia. In-servicing relating to dementia care likewise must be performed annual for at least eight hours. In-service training must "be developed in consultation with individuals or organizations with

specific expertise in dementia care or by an outside source with expertise in dementia care." As it stands today, only six hours of dementia training is required and this training is only necessary for RCFEs that advertise or promote special care for residents with dementia. These new amendments result from the recognition that as the need for assisted living grows exponentially, and not all residents or families can afford a memory care unit, caregivers are increasingly working with residents diagnosed with dementia in a regular assisted living environment.

The Department of Social Services announced that official Implementation Plans are expected in December 2015. A new poster regarding how to contact Community Care Licensing Division with a complaint, along with a new phone number, is soon to be released by the Department at that time as well.

These changes come following increasing scrutiny by the Community Care Licensing Division. The 2014-2015 state budget added funding for over 70 new positions at the Community Care Licensing Division and an unprecedented \$7.5 million to fund stronger oversight, including training for inspectors and their managers. Likewise, these changes for 2016 come in the midst of a recent trend in assisted living litigation attacking a community's regulatory compliance, specifically employee training. We continue to see the trend of cunning Plaintiff's attorneys seeking damages for Negligent Supervision and Retention of employees based on the communities failure to provide training per the Code.

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About the Author:

Lora Ajello joined Wroten & Associates in 2009. She was admitted to the California State Bar and the U.S. District Court for the Central District of California in 2008. Ms. Ajello graduated cum laude from the University of California, Irvine with degrees in both Political Science and History. At UCI, Ms. Ajello spent a summer interning for the Department of Justice, Office on Violence Against Women, in Washington, D.C. She obtained her Juris Doctorate from Chapman University School of Law in Orange, California in 2008. She was honored in law school for her work as an editor for the Nexus Journal, and received CALI Awards in both Advanced California Civil Procedure and Legal Research and Writing.

During her time at Chapman, Ms. Ajello spent a semester abroad in England studying comparative legal theories and dispute resolution at Cambridge University. Ms. Ajello clerked for the Honorable Judge Kirk Nakamura on his limited civil calendar at the Orange County Superior Court and additionally worked at the Alona Cortese Elder Law Center.

Ms. Ajello is a member of the Orange County Bar Association, the American Bar Association and the Los Angeles County Bar Association. She additionally serves as her sorority's collegiate chapter Risk Management Advisor.

Lora A. Ajello at [lajello@wrotenlaw.com](mailto:lajello@wrotenlaw.com)