



California Association of Homes and Services for the Aging



# Legal Update

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## RCFE FOOD SERVICE NOT SUBJECT TO COUNTY OVERSIGHT

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In recent months, we have received numerous reports of County Boards of Health attempting to assert jurisdiction over food service operations of residential care facilities for the elderly ("RCFEs"). In some cases, County inspections have been taking place for years while in other instances Counties are first attempting to assert their authority.

California law is clear on this issue. Food service operations of RCFEs are subject only to regulation by the Department of Social Services ("DSS"). California Health and Safety Code §114470 states as follows:

"Child care facilities, community care facilities, and residential care facilities for the elderly shall not be deemed to be either food establishments, as defined in Section 113780, or food facilities, as defined in Section 113785, and, therefore, shall be exempt from this chapter."

This means that the California Uniform Retail Food Facilities Law ("CURFFL") does not apply to RCFEs. In fact, there is a current bill pending before the Legislature (SB 144 (Runner)), that would have specifically remove the RCFE exemption from retail food facility inspections. Opposition from provider associations has prompted the author to amend the bill to retain the current exemption. RCFEs should gently but firmly advise County Health Inspectors of Section 114470 and decline to allow them to inspect your community.

In one recent incident, a County inspector contended that he had a right to inspect an RCFE because the RCFE in question served meals to staff and to visitors for which it charged a modest fee. There is no legal basis for this contention. Section 114470 cannot reasonably be read to hold that an RCFE loses its exemption if it provides meals to its employees and the guests of residents. There is nothing in the law from which one can infer that by serving meals to guests or staff, an RCFE is subject to County inspections. If an RCFE were to open up its food service to the

general public and allow diners to come in from off the street, the County might reasonably assert jurisdiction. However, the serving of meals to staff and guests furthers the legitimate operating interests of an RCFE and does nothing to erode the express statutory exemption.

Food service operations are already highly regulated by DSS. County oversight is duplicative and may well lead to contrary directives. Moreover, Counties charge substantial annual fees for the “privilege” of being regulated by them. RCFEs that continue to incur problems with County Departments of Health after advising them of the RCFE exemption are urged to contact CAHSA.

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