The information included in this paper is provided as general information only. This information should not be considered complete or dispositive guidance for legal or regulatory compliance. The specific application of laws and regulations to an organization requires a careful consideration of all the relevant facts and circumstances and may require assistance of competent legal counsel.

**Title:** RCFEs – Background Check Requirements for Home Care Staff

**Question:** What is the background check requirement when sending in agency staff from a home health agency, home care aide organization, or hospice into an assisted living facility – otherwise known by the state licensure process as a Residential Care Facility for the Elderly (RCFE)?

Home health agencies, hospices, and home care aide organizations often provide licensed and skilled and unlicensed and custodial services and care in Residential Care Facilities for the Elderly (RCFE). In California, there are 6,828 RCFEs serving over 154,726 clients. Per current law, RCFEs are required to provide at least the following basic services:

(a) Care and supervision, which means the facility assumes responsibility for, or provides or promises to provide in the future, responsibility for, or provides or promises to provide in the future, ongoing assistance with activities of daily living without which the resident’s physical health, mental health, safety, or welfare would be endangered. Assistance includes assistance with taking medications, money management, or personal care.

(b) Assistance with instrumental activities of daily living in the combinations which meet the needs of residents.

(c) Helping residents gain access to appropriate supportive services, as defined, in the community.

(d) Being aware of the resident's general whereabouts, although the resident may travel independently in the community.

(e) Monitoring the activities of the residents while they are under the supervision of the facility to ensure their general health, safety, and well-being.

(f) Encouraging the residents to maintain and develop their maximum functional ability through participation in planned activities.

Many of our members provide home health, hospice and companion services in these facilities. It has always been clear to CAHSAH that licensed and certified persons employed through home health or hospice agencies were exempt from fingerprint requirements, because a fingerprint check is a condition of their licensure or certification. That is, current regulations for Residential
Care Facilities for the Elderly exempt employees of a licensed home health agency and licensed hospice interdisciplinary teams who have a contract with a client of the facility and are in the facility at the request of the client or the client’s legal decision maker. Additionally, the regulations specifically cite and exempt Certified Home Health Aides, Certified Nurses Aides, and medical professionals, including LVN, RN, and MDs. The regulation also exempts volunteers and other entities from fingerprint requirements under certain circumstances as identified in the regulation. This exemption does not apply to employees of the facility. They are still required to have background checks through the DSS fingerprint system.

Per Title 22, Division 6, Chapter 1, Article 3, Application Process, Section 87219 (3) (A)

The following individuals are exempt from requirements applicable under paragraph (1):

(A) A medical professional, as defined in Section 87101(m) (1), who holds a valid license or certification from the individual's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee, if all of the following apply:

(i) The criminal record of the individual has been cleared as a condition of licensure or certification by the individual's California medical care regulatory entity.

(ii) The individual is providing time-limited specialized clinical care or services.

(iii) The individual is providing care or services within the individual's scope of practice.

(iv) The individual is not a community care facility licensee or an employee of the facility.

Note: Title 22, Division 6, Article 1, Section 87101 (m) (1) defines “a medical professional” means an individual who is licensed or certified in California to perform the necessary medical procedures within his/her scope of practice. This includes, but is not limited to, Medical Doctor (MD), Registered Nurse (RN) and Licensed Vocational Nurse (LVN).

As part of an emergency regulation process on July 16, 2003 for residents of RCFEs that hire third-party contractors or other business professionals. Third-party contractors or other business professionals are exempt from the DSS Criminal Background Check Clearance if all of the following apply, according to Title 22, Division 6, Chapter 1, Article 3, Application Process, Section 87219 (3) (C) (i) – (iii)

(3) The following individuals are exempt from requirements applicable under paragraph (1):

(i) The individual is retained by a client;

(ii) The individual is at the facility at the request or permission of that client;

(iii) The individual is not left alone with other clients.

Therefore, if your home care aide organization is contracted by the client to come in as a companion or provide supplemental services for the client under the circumstances listed above, then, you no longer are required to get the fingerprint check as required under the Department of Social Services Licensing requirements. CAHSAH would still suggest that you continue to do background checks and/or fingerprinting through private companies or the government (Live
Scan) for all your employees, as your company is still potentially liable for all care rendered to the client. However, now you will not be required to get a check under the DSS system, which checks for a larger list of crimes than the fingerprint check for employers who send personal care workers into people’s home. Our members have been frustrated with having to do duplicate checks, because the two systems have never been compatible, as DSS’ check has more crimes. Please see the other FAQ entitled, “RCFE - Avoiding Duplicative, Costly Criminal Background Checks.”

You can find reference to Section 87219, the background check requirements in RCFEs, at: http://www.dss.cahwnet.gov/getinfo/pdf/rcfe2.pdf