



State of California—Health and Human Services Agency
California Department of Public Health



ARNOLD SCHWARZENEGGER
Governor

December 3, 2008

Mr. Robert Jenkins, Director
The Green House Project
NCB Capital Impact
2011 Crystal Drive
Crystal City, VA

Dear Mr. Jenkins:

Thank you for your October 24, 2008, letter seeking clarification on three statutory and regulatory items related to your proposed Green House Project in California.

I believe that we have provided verbal response to these queries in our past meetings but we are happy to respond in writing.

1. Health and Safety Code (H&SC), Section 1276.65(b)

H&SC states that “a person employed to provide services such as food preparation, housekeeping, laundry, or maintenance” may not provide “nursing care to residents.” It further stipulates that such person’s time shall not be counted in “determining ratios.”

You seek to clarify that this statute prohibits non-CNAs from performing “nursing care” but does not prohibit CNAs from performing food preparation, housekeeping, and laundry services, as long as the hours they commit to non-nursing care tasks are not included for the purposes of calculating required CNA staffing ratios.

L&C response: We concur with your interpretation of this statute. A CNA may perform activities to prepare food, housekeeping and laundry services, etc. As we have explained before, it will be incumbent upon your organization to develop a methodology and process to ensure that CNA time spent in performance of duties not directly related to patient care will not be counted towards the required minimum nursing hours per patient day mandated at H&SC Section 1276.5.

2. Title 22: Division 5, Chapter 3 - s 72351. Dietetic Service – Staff.

This section of the Nursing Home Regulations states that “persons other than dietetic service personnel shall not be allowed in the kitchen areas unless required to do so in the performance of their duties.”

It is your interpretation that this regulation would allow the CNA/Shahbaz to be in the kitchen area because food preparation is one of his/her specific duties. It is our interpretation that this section does not prohibit Green House residents and their family members or friends from entering the kitchen or participating in food preparation as long as they follow appropriate food handling practices (as supervised by the Shahbazim) and they are not “personnel” employed by the facility.

L&C response: We concur that if the CNA/Shahbaz duty statement includes food preparation, then the CNA/Shahbaz would be allowed in the kitchen area. The facility shall assure food service training and appropriate skills and competency of the CNA/Shahbaz. The same would be the case for family members or friends as long as the facility has an established policy and on-going training and supervision for the safe food handling, infection control, etc., as the facility will retain responsibility for all individuals' actions.

3. Title 22: Division 5, Chapter 3 - s 72327. Nursing Services – Director of Nursing

This section of the Nursing Home Regulations states that “the director of nursing services shall have, in writing, administrative authority, responsibility and accountability for the nursing services within the facility.”

It is your interpretation that the Green House Project meets this requirement because the nursing services delivered by the Shahbazim are supervised by and directly accountable to the director of nursing (DON) through the charge nurses in the homes. The Shahbazim are supervised by, and report to, the nurses for the nursing services they provide under their scope of practice. The Shahbazim report to the Green House “Guide” for all their responsibilities outside of their nursing services (e.g., house keeping, laundry, scheduling).

L&C response: We concur with your interpretation. As long as the CNA/Shahbaz reports directly to the DON or a licensed nurse designated as a Director of Staff Development for those elements that would fall under the practice of nursing, and for all other duties the CNA/Shahbaz reports to the “Guide”, this “span of control” is

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acceptable to L&C. It is worth noting that state law (H&SC Section 1337.1 (c)) and federal regulations (Title 42, Code of Federal Regulations (42 CFR) Section 483.75(e) (8)) require facilities to provide continuing in-service training and regular performance review of every nurse assistant addressing areas of weakness based on the reviews.

Although your letter seeks clarification on the above items only, we encourage you to continue this dialogue with L&C to ensure that the Green House Model conforms to all state statutes and regulations.

If you have questions regarding this letter and/or need further clarification on other matter, please do not hesitate to call me at (916) 552-9370.

Sincerely,



Gina Henning, Chief
Policy, Research & Enforcement

cc: Ms. Kathleen Billingsley, R.N.
Deputy Director
Center for Health Care Quality
1615 Capitol Avenue, MS 0512
P.O. Box 997377
Sacramento, CA 95899-7377