Comparison of Food Safety Related Requirements for Long-Term Health Care Facilities

in the California Health and Safety Code, the California Code of Regulations, and the Code of Federal Regulations

California Department of Public Health

June 2009

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Prepared By: California Department of Public Health

Food and Drug Branch:

Susan Strong, REHS

Licensing and Certification Division:

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Approved By: ____________________

Governor: ____________________________

Agency: ____________________________

Comparison of Food Safety Related Requirements for Long-Term Health Care Facilities

Executive Summary

This report provides a detailed comparison of the laws, inspection process, enforcement options, inspection frequency, new and remodel construction requirements, inspector/surveyor educational background and knowledge requirements, and complaint response employed by the various agencies responsible for ensuring the delivery of safe food to patients at California long-term health care facilities. The comparison is intended to assist CDPH and other interested parties in determining whether the existing multi-agency oversight of food services at long-term health care facilities is necessary and appropriate or whether changes in oversight and regulatory authority should be considered.

Food service operations at California long-term health care facilities are subject to both state and federal laws, which are enforced by local, state, and federal regulatory agencies. Requirements for long-term health care facility food service facilities can be found in the California Health and Safety Code (CHSC), the California Code of Regulations (CCR), and the Code of Federal Regulations (CFR). Enforcement of these various laws is conducted by 62 local environmental health agencies, the California Department of Public Health (CDPH) Licensing and Certification Division (L&C), the Office of Statewide Health Planning and Development (OSHPD), and the United States Department of Health and Human Services' Center for Medicare and Medicaid Services (CMS).

CDPH L&C has a dual responsibility: 1) licensing 30 different types of health care facilities and providers so they may legally operate in California, and 2) certification of health care facilities that choose to accept federal payments for Medicare and Medicaid (through Medi-Cal). L&C's goal is to promote compliance with applicable state and federal standards pertaining to all aspects of patient/resident care. The regulatory authority for L&C state licensing requirements is contained in the CHSC and CCR Title 22. L&C has a contractual agreement with federal CMS to certify health care facility compliance with 42 CFR requirements. To fulfill these responsibilities, L&C staff conduct site inspections/surveys on a periodic basis, identify areas of deficiency, and, when necessary, select an appropriate enforcement option to gain compliance.

The regulatory authority for local environmental health enforcement agency inspection of retail food facilities, including long-term health care facilities, is contained in a part of the California Health and Safety Code, known as the California Retail Food Code (CRFC). Despite long-standing legal authority to do so, many local agencies only initiated the licensure and inspection of long-term health care facility food service operations in the fall of 2007. This added layer of

regulatory oversight was unexpected by some facility operators, who believed that compliance with L&C requirements should also constitute compliance with CRFC requirements. Facility operators also objected to the cost of the health permit fees paid to local agencies that were in addition to L&C's licensing fees.

In response to their member's concerns, the California Association of Health Facilities (CAHF) sponsored legislation that would have exempted long-term health care facilities from CRFC requirements. After lengthy discussions, CAHF agreed to suspend the development of new legislation when CDPH agreed to conduct a comprehensive review of the food safety and food services provisions in the federal certification and state licensure regulations and compare those requirements with the CRFC requirements used by local enforcement agencies during the inspection of long-term health care facilities. This report reflects the review findings with the following key conclusions:

- CRFC (enforced by local environmental health departments) is much more comprehensive, scientifically current, and public health protective than either CCR Title 22 or the CFR (enforced by L&C) as they pertain to food services. Four areas of conflict and some overlap exist between CRFC and Title 22 requirements (see Table 1 below and comprehensive comparison tables in Appendix E). However, none of these differences should pose a compliance problem for facility operators. In the case of the conflicts, if the more stringent code is followed, the facility will be in compliance with both codes. On the issue of the CFR, the Centers for Medicaid and Medicare Services (CMS) provide guidelines on how to apply the three very general food services requirements. However, guidelines do not have force of law.

- While some overlapping regulatory requirements exist, the scope of the L&C food services inspection survey is very different than the local agency inspection. L&C survey staff are most often Registered Nurses who may or may not have up-to-date food safety knowledge and training. Local agency staff are Registered Environmental Health Specialists who have been trained to focus on the specific risk factors that are known to cause foodborne illnesses and outbreaks.

- L&C statistical data indicates that the frequency of food service care deficiency citations is increasing on an annual basis and that, in comparison to other states, California does not compare favorably. Local agencies have a higher inspection frequency compared to L&C. Local agency staff also has more enforcement authority and options available to gain compliance in the food safety arena than does L&C. In the case of foodborne illness outbreaks and sewage back-ups, L&C contacts local agency staff to be the lead agency during the investigation and correction.

- Patients/residents at long-term health care facilities are considered a highly susceptible population in that they often have compromised medical and physical conditions that place them at high risk for the complications of foodborne illness. In addition, they are a "captive audience" because they do not have any choice but to consume the food that the facility provides. Accordingly, patients/residents at long-term health care facilities deserve at least the same food safety protections as members of the general public who dine at restaurants in their community.

CDPH concludes that the CRFC, enforced by local environmental health agencies, provides greater food safety protections than the applicable requirements in either Title 22 or the CFR. Consequently, it is appropriate to continue to include long-term health care facilities in the definition of "food facility" in the California Retail Food Code and to continue local environmental health agency licensure and inspection of these facilities.

Table 1: Summary of significant California Retail Food Code and California Code of Regulations Title 22 conflicting and overlapping requirements for long-term health care facility food service operations[1]

Food Safety Requirement	**CRFC** Enforced by Local Agencies	**CCR Title 22** Enforced by CDPH L&C	**Comparison of CRFC and Title 22 Requirements**	**Conclusion**
Food Employee Knowledge/Food Safety Certification	Requires al least one food safety certified individual for each kitchen; requires all food employees be trained and demonstrate knowledge pertinent to their assigned tasks.	Requires food service staff be trained in basic food sanitation techniques.	T22 does not require any demonstration of safe food handling competency from either the dietician (if there is one on staff) or any other facility food workers.	CRFC is more public health protective.
Food Employee Health	Specifies when ill food workers are to be assigned restricted duties or excluded from work as well as the mechanism to allow for a return to work; requires food employees to notify person in charge of	Requires food employees to be excluded from work when affected by a skin condition or communicable disease.	T22 contains no specific guidance on how to exclude and who will exclude food employees from working when ill. L&C staff would contact the local agency to investigate.	CRFC is more public health protective.

[1] A set of comprehensive Comparison Tables for six of the long-term health care facility subcategories is included in Appendix E.

Food Safety Requirement	CRFC Enforced by Local Agencies	CCR Title 22 Enforced by CDPH L&C	Comparison of CRFC and Title 22 Requirements	Conclusion
	specified diagnosed illnesses or skin conditions.			
Handwashing Facilities, Frequency, and Procedures	Contains requirements for location of sinks, handwashing supplies, minimum water temperature and how, when, and how often food workers are to wash hands; requires food employees to minimize bare hand contract with ready-to eat-food.	Requires a fully equipped handwashing sink with no specifics.	CRFC provides science-based procedures and lists the state of the science of handwashing as it pertains to food service.	CRFC is more public health protective.
Food Employee Hygienic Practices	Contains requirements for jewelry; specifies use requirements for single-use and cloth gloves; and prohibits eating/food tasting/drinking/use of tobacco in the kitchen.	Prohibits smoking in kitchen areas.	CRFC provides specific hygiene practices for food employees to follow.	CRFC is more public health protective.

Food Safety Requirement	**CRFC** Enforced by Local Agencies	**CCR Title 22** Enforced by CDPH L&C	**Comparison of CRFC and Title 22 Requirements**	**Conclusion**
Food Protection from Contamination	Contains specific requirements for food protection during transportation, storage, preparation, holding, and serving; specifies cold storage methods for raw meats to minimize cross-contamination.	Requires ice used as a food ingredient be sanitary; prohibits unauthorized access to the kitchen; prohibits the service of spoiled or contaminated food.	T22 requirements are minimal compared to CRFC, which includes two pages of specific required procedures.	CRFC is more public health protective.
Foods that Require Temperature Control for Safety	Specifies temperature requirements and procedures for the hot and cold holding, cooking, cooling, reheating and service of potentially hazardous food (PHF) products.	Specifies hot and cold holding requirements for PHF; requires food stored in refrigeration units to be covered, clearly labeled, and dated.	CRFC provides state of the art science procedures for time temperature control for food safety. There are 2 conflicts between CRFC and T22: 1. CRFC requires cold PHF to be held at a maximum of 41 degrees F and hot PHF to be held at a	CRFC PHF hot and cold holding requirements are based on current scientific knowledge of pathogen growth. T22 regulations are out of date. CRFC allowance for loosely covering PHF during refrigerated cooling allows for accelerated cooling thereby reducing pathogen growth during the cooling process. T22 requirement for tightly covered PHF during cooling is

Food Safety Requirement	**CRFC** Enforced by Local Agencies	**CCR Title 22** Enforced by CDPH L&C	**Comparison of CRFC and Title 22 Requirements**	**Conclusion**
			minimum of 135 degrees F while T 22 requires PHF to be held at 45 degrees F and 140 degrees F respectively. 2. CRFC allows foods cooling under refrigeration to be loosely covered during the cooling process while T22 requires that cooling foods be tightly covered.	outdated and not consistent with best food safety practices.
Food Storage	Contains requirements to protect stored food from sources of contamination.	Contains requirements to protect stored food from sources of contamination.	There is a conflict between CRFC and T22: CRFC requires food to be stored at least 6 inches above the floor; T22 simply requires food to be stored above the floor with no specified height (except for	Duplication in CRFC and T22 requirements. Conflict has no public health implications.

Food Safety Requirement	CRFC Enforced by Local Agencies	CCR Title 22 Enforced by CDPH L&C	Comparison of CRFC and Title 22 Requirements	Conclusion
			Intermediate Care Facilities where the storage height requirement is 12 inches above the floor).	
Cleaning and Sanitizing Equipment	Contains equipment and utensil washing and sanitizing requirements and procedures.	Contains equipment and utensil washing and sanitizing requirements and procedures.	CRFC includes specific requirements and recognizes updated products, need for equipment to monitor sanitation levels; recognizes cleaning frequency of utensils/surfaces, while T22 requirements are very general. There is a conflict between CRFC and T22: CRFC requires equipment and utensils that are washed in a sink using hot water as the	CRFC provides more public health protection as well as options to facility operators. CRFC hot water sanitizing requirements are based on current scientific knowledge of pathogen growth. T22 regulations are out of date but the conflict between CRFC and T22 has no public health implications.

Food Safety Requirement	CRFC Enforced by Local Agencies	CCR Title 22 Enforced by CDPH L&C	Comparison of CRFC and Title 22 Requirements	Conclusion
			final sanitizing rinse to immerse the utensils in water that is at least 171 degrees F for at least 30 seconds. T22 requires a 2-minute immersion in 170 degree F water or a 30-second immersion in 180 degrees F water.	

Comparison of Food Safety Related Requirements for Long-Term Health Care Facilities

INTRODUCTION

Food service operations at California long-term health care facilities are subject to both state and federal laws, which are enforced by local, state, and federal regulatory agencies. Requirements for long-term health care facility food service facilities can be found in the California Health and Safety Code (CHSC), the California Code of Regulations (CCR), and the Code of Federal Regulations (CFR). Enforcement of these various laws is conducted by 62 local environmental health agencies, the California Department of Public Health (CDPH) Licensing and Certification Division (L&C), the Office of Statewide Health Planning and Development (OSHPD), and the United States Department of Health and Human Services' Center for Medicare and Medicaid Services (CMS).

This report provides a detailed comparison of the laws, inspection process, enforcement options, inspection frequency, new and remodel construction requirements, inspector/surveyor educational background and knowledge requirements, and complaint response employed by the various agencies responsible for ensuring the delivery of safe food to patients at California long-term health care facilities. The comparison is intended to assist CDPH and other interested parties in determining whether the existing multi-agency oversight of food services at long-term health care facilities is necessary and appropriate or whether changes in oversight and regulatory authority should be considered. As an aid to the reader, a summary acronym list is included as Appendix G at the end of this report.

BACKGROUND

CDPH L&C has a dual responsibility: 1) licensing 30 different types of health care facilities and providers so they may legally operate in California and 2) certification of health care facilities that choose to accept federal payments for Medicare and Medicaid (through Medi-Cal).

L&C's goal is to promote compliance with applicable state and federal standards pertaining to all aspects of patient/resident care. The regulatory authority for L&C state licensing requirements is contained in the CHSC and CCR T22. L&C has a contractual agreement with federal CMS to certify health care facility compliance with 42 CFR requirements. To fulfill these responsibilities, L&C staff conduct site inspections/surveys on a periodic basis, identify areas of deficiency, and, when necessary, select an appropriate enforcement option to gain compliance.

Prior to July 1, 2007, local environmental health agency authority to inspect retail food facilities was contained in a chapter of the CHSC known as the California Uniform Retail Food Facilities Law (CURFFL). CURFFL defined a retail food establishment as "... any room, building, or place, or portion thereof, maintained, used, or operated for the purpose of storing, preparing, serving, manufacturing, packaging, transporting, salvaging, or otherwise handling food at the retail level." CURFFL further defined "retail" as handling of food for dispensing or sale directly to the consumer.

In 1986, the California Department of Health Services (CDHS) was asked by local enforcement agencies to provide a legal opinion regarding the inclusion of food service operations at acute care hospitals within the CURFFL definition of retail food establishment. In response to the request, CDHS Office of Legal Services concluded that a hospital must be both licensed as a health facility and permitted as a retail food facility.

Since L&C was (and still is) not authorized to enforce CURFFL requirements, local environmental health agencies were notified that hospital food services should be inspected, permitted, and regulated in the same manner as any other retail food facility. This notification was in the form of a letter dated July 11, 1986 from CDHS, Local Environmental Health Services Branch, to all 62 Directors of Environmental Health. The letter further stated that "...other facilities such as skilled nursing facilities, board and care homes, day care centers, etc., would also meet the definition of "food establishments" and would also be required to meet the provisions of CURFFL." No comprehensive data exists on how local environmental health agencies responded to this notification. It is known that the Orange Local Agency Health Care Agency, Environmental Health Division, has been inspecting and permitting food service facilities within skilled nursing facilities and acute care hospitals since the early 1990s.

On July 1, 2007, CURFFL was repealed and replaced with a new body of retail food law in the CHSC known as the California Retail Food Code (CRFC). In the CRFC, the definition of "food establishment" was eliminated and replaced with a new definition for "food facility." In addition, example categories of food facilities were added to the definition that included, among others, "public and private school cafeteria", "restricted food service facility" (bed and breakfast), and "licensed health care facility."[2] It should be noted that there is no definition for "licensed health care facility" in the CRFC. However, the intent of the bill's sponsor, the California Retail Food Safety Coalition, was to include in the definition of food facility all facilities licensed by CDPH L&C that provide meals as part of patient/client/resident care.

As a result of the clarification in the CRFC, many local environmental health enforcement agencies began inspecting and permitting licensed health care

2 See CRFC Section 113789 (b) (3) in Appendix A

facility kitchens the fall of 2007. CDPH L&C assisted local agencies by notifying licensed facility operators that they should expect to be contacted by local agencies.[3] In addition, L&C provided the locations of licensed health care facilities to assist local agencies in identifying food facilities within their respective jurisdictions.

A "grandfather clause" in the CRFC deems that food facilities with pre-existing, non-conforming structural and equipment deficiencies nevertheless comply with the CRFC pending renovation or replacement, as long as no significant public health hazard results from the deficiency.[4] Despite the "grandfather exemption", a few local agencies issued structural and equipment deficiency notices for items that did not pose a public health risk. The deficiencies were detailed on the written food facility inspection report, along with set time limits for correction. In some facilities, the cost estimate for the requested structural upgrades and equipment replacement was tens of thousands of dollars.

To address the industry concerns that a few local agencies were not aware of or were ignoring the CRFC "Grandfather Clause," CDPH Food and Drug Branch (FDB) prepared a guidance document that clearly described the circumstances when facility upgrade and equipment replacement are not necessary. A copy of the guidance document, which was issued in August of 2008, can be found in Appendix C. A copy of the document is also posted to the FDB website.[5]

The licensure and inspection by local agency staff was unexpected by some long-term health care facility operators, who believed that compliance with CDPH L&C requirements should also constitute compliance with CRFC requirements. Facility operators also objected to the cost of the health permit fees paid to local agencies that were in addition to L&C's licensing fees. This led them to further question the need for local environmental health agency oversight.

Several skilled nursing facility operators contacted their trade association, the California Association of Health Facilities (CAHF), to air their concerns. In response, CAHF sponsored Assembly Bill (AB) 1773, introduced in January of 2008 by Assembly Member Hayashi. This bill would have exempted long-term health care facilities from CRFC requirements. After lengthy discussions with CAHF and Assembly Member Hayashi's staff, CDPH agreed to conduct a comprehensive review of the food safety and food services provisions in the federal certification and state licensing regulations and compare those requirements with the CRFC requirements used by local enforcement agencies during the inspection of long-term health care facilities. It was also agreed that CDPH would prepare a report containing the findings of the review as well as any recommendations relative to the continuation of multi-agency inspection and/or

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3 See copy of letter from L&C in Appendix B
4 See CRFC Section 114430 (c) (2) in Appendix A
5 http://www.cdph.ca.gov/pubsforms/Documents/fdbRFCrfcRa08001.pdf

augmentation of existing law to ensure the adequacy of food safety and food services at the facilities in question. In return for the CDPH agreement to conduct the review and provide the report, Assembly Member Hayashi agreed to not pursue AB 1773.

It should be noted that there other categories of licensed health care facility in addition to "long-term health care" facility that are subject to local agency licensure and inspection. These facilities include: acute care hospital, acute psychiatric hospital, special hospital, chemical dependency recovery hospital, and adult day health care facility. These five facility categories were not a subject of the dispute resulting in the legislation proposed by Assembly Member Hayashi and are not included in the scope of this report.

Food service operations licensed by the California Department of Social Services are exempt from CRFC requirements and are not addressed in this report. The exempt facility categories include: child day care facility, community care facility, residential care facility for the elderly, and residential care facility for the chronically ill. It may be appropriate at some point in the future to evaluate the food service operations at these CRFC exempt facilities to verify that the level of food protection is adequate to protect the health of the population served.

LONG-TERM HEALTH CARE FACILITY OVERVIEW

Long-term health care facilities are defined in CHSC Section 1418 to include:

1. Skilled Nursing Facility (SNF)
2. Intermediate Care Facility (ICF)
3. Intermediate Care Facility/Developmentally Disabled (ICF/DD)
4. Intermediate Care Facility/Developmentally Disabled – Habilitative (ICF/DD-H)
5. Intermediate Care Facility/Developmentally Disabled – Nursing (ICF/DD-N)
6. Congregate Living Health Facility (CLHF)
7. Nursing Facility (NF)
8. Pediatric Day Health and Respite Care Facility (PDHRCF)

Each of the eight facility types is fully defined in CHSC Sections 1250 and 1760.2 as to minimum and/or maximum bed count, patient/resident medical needs, and minimum level of medical services to be provided. The CHSC also authorizes L&C to promulgate regulations to define operational requirements pertaining to all aspects of long-term health care facility patient/resident care including food services. Food services regulations are included in CCR Title 22 (T22) and are the basis of the L&C state licensing survey food safety requirements.

The majority of long-term health care facilities are either a SNF or fall into one of the ICF categories. In general, SNFs provide 24-hour nursing care for elderly

residents as well as to individuals of all ages who need short-term rehabilitation or specialized medical programs and ICFs provide care and rehabilitative services for people not capable of full independent living. For each long-term health care facility category, a description of the facility size, the population served and the number of California licensed/certified facilities in included in Appendix H.

Patients/residents who reside in long-term health care facilities constitute some of California's most vulnerable population due to age, compromised immune systems, and concurrent medical conditions. Complications from foodborne illness can cause death. Food handlers and caregivers employed at long-term health care facilities represent a culturally diverse background, many with limited English language skills and little or no food safety background or knowledge. Cultural food preferences can also present food safety challenges.

The majority of California long-term health care facilities are owned by for-profit corporations, limited liability corporations (LLC), and partnerships. There are a few owners who are nonprofit corporations and sole proprietorships.

REGULATORY FOUNDATION – A COMPARISON OF THE STATUTES AND REGULATIONS APPLICABLE TO LONG-TERM HEALTH CARE FACILITIES

Currently, three bodies of law dictate the structural and operational requirements for food services at California long-term health care facilities:

1. California Retail Food Code
2. California Code of Regulations, Titles 22 and 24
3. Code of Federal Regulations, Title 42

CALIFORNIA RETAIL FOOD CODE (CRFC)

Local environmental health enforcement agencies utilize the portion of the CHSC known as the California Retail Food Code (CRFC) to evaluate food safety practices and enforce structural and operational requirements at retail food facilities. The CRFC is based on the United States Food and Drug Administration (FDA) 2005 Model Food Code, which represents the most current, science-based knowledge of safe food handling practices.

FDA updates the Model Food Code every four years. FDA's purpose in maintaining an updated Model Food Code is to assist food safety regulatory agencies at all levels of government by providing them with a scientifically-sound technical and legal basis for regulating the retail segment of the food industry. The current edition of the Model Food Code represents a collaborative effort by FDA and the Food Safety and Inspection Services of the U.S. Department of

Agriculture (USDA) and is intended to provide practical, science-based guidance and enforceable provisions for mitigating risk factors known to cause foodborne illness. The Model Food Code is a reference document for regulatory agencies that oversee food safety in restaurants, bakeries, delicatessens, grocery stores, and institutions, such as nursing homes and school cafeterias. To date, more than 40 states, including California, have adopted some or all of the FDA Model Food Code provisions.

Epidemiological outbreak data repeatedly identify five major risk factors related to employee behaviors and preparation practices in retail and food service establishments as contributing to foodborne illness:

- Improper holding temperatures,
- Inadequate cooking, such as undercooking raw shell eggs,
- Contaminated equipment;
- Food from unsafe sources, and
- Poor personal hygiene.

The CRFC includes specific control requirements for the risk factors indicated above and further establishes five key public health interventions to protect consumer health. Specifically, these interventions are:

- Demonstration of food safety knowledge,
- Food handler health controls,
- Controlling hands as a vehicle of contamination,
- Time and temperature parameters for controlling pathogens, and
- Consumer advisory.

In summary, the CRFC is a comprehensive body of law which represents the best and most current scientific knowledge and that, if effectively enforced, will reduce the risk of foodborne illnesses and outbreaks from foods prepared at retail food facilities. The complete text of the CRFC is included in Appendix A.
CALIFORNIA CODE OF REGULATIONS, T22 (CCR T22)

As mentioned earlier in this report, there are eight categories of long-term health care facility defined in the CHSC:

1. Skilled Nursing Facility (SNF)
2. Intermediate Care Facility (ICF)
3. Intermediate Care Facility/Developmentally Disabled (ICF/DD)
4. Intermediate Care Facility/Developmentally Disabled – Habilitative (ICF/DD-H)
5. Intermediate Care Facility/Developmentally Disabled – Nursing (ICF/DD-N)
6. Congregate Living Health Facility (CLHF)

7. Nursing Facility (NF)
8. Pediatric Day Health and Respite Care Facility (PDHRCF)

CHSC Section 1250.1 authorizes CDPH to promulgate regulations that prescribe the operational and state licensing requirements for six of the eight categories of long-term health care facility (SNF, ICF, ICF/DD, ICF/DD-H, ICF/DD-N and PDHRCF). For the area of food service, specific regulations currently exist in only four of the categories: SNF, ICF, ICF/DD and ICFDD-H. CHSC Section 1760.4 (c) allows L&C to license a PDHRCF if the requirements for CLHF are met (see below). There are no specific food service regulations currently in place for ICF/DD-N.

CHSC Section 1265.7 authorizes CDPH to promulgate regulations that prescribe the operational and licensing requirements for a CLHF. Although there are no current regulations in place specific to this long-term health care facility category, CHSC Section 1267.13 (n) allows L&C to license a CLHF if the facility meets the requirements in CHSC Section 1250 and the SNF regulations (with a few SNF regulatory sections not required for a CLHF). In short, L&C requires PDHRCF and CLHF to meet most of the SNF food services regulatory requirements for state licensure.

CHSC Section 1250 (k) defines NF as a health facility licensed by L&C that is also certified as a care provider under Title XVIII and/or Title XIX of the Social Security Act. L&C utilizes only the CFR (see below) for evaluating NF for federal certification. As such, there are no CCR food service regulations for this facility category nor are they necessary.

Copies of the CCR T22 regulations for SNF, ICF, ICF/DD. ICF/DD-H, PDHRCF and CLHF are included in Appendix D.

CODE OF FEDERAL REGULATIONS (CFR)

The CFR sections pertinent to food services at long-term health care facilities are contained in 42 CFR 483.35 (i). The only requirements for certification of food services are as follows:

"The facility must:

(1) Procure food from sources approved or considered satisfactory by Federal, State, or local authorities;
(2) Store, prepare, distribute, and serve food under sanitary conditions; and
(3) Dispose of garbage and refuse properly."

These CFR requirements are obviously very general and, while there are guidelines that explain the intent, the guidelines do not have any force of law.

The CFR requirements are minimal compared to the CRFC and T22 regulations and L&C has no authority to expand or modify federal regulatory requirements. It should also be re-stated that the CFR requirements only apply to those facilities that wish to obtain L&C certification to qualify for federal reimbursement of patient care costs under Medicare and Medi-Cal.

Appendix E contains comparison tables that highlight the specific differences between CRFC, CCR T22, and 42 CFR 483.35 (i) requirements for six of the eight categories of long-term health care facilities. A comparison table for ICF/DD-N is not included in Appendix E as there are no T22 regulations in place for this long-term health care facility category. Further, NFs are only required to meet 42 CFR 483.35 requirements and the comparison is described in the SNF comparison table in Appendix E.

APPENDIX E - COMPARISON TABLE SUMMARY

As noted in the Comparison Tables in Appendix E, the CRFC structural, equipment and operational requirements for food services at long-term health care facilities are significantly more comprehensive than the licensing requirements in CCR T22, and extremely more so than the certification requirements in the CFR. As the CFR requirements are minimal and are only used when a long-term health care facility is applying for certification from L&C to receive federal funding, a narrative comparison of the differences between the CRFC and the CFR requirements for food services at long-term health care facilities is not included in this section but is detailed in the comparison tables in Appendix E.

SKILLED NURSING FACILITIES

The specific differences between CRFC and T22 requirements for food services at SNF are as follows:

1. **Designated Person in Charge**
   CRFC requires that a "person in charge" be designated and be present at the facility during all hours of operation.

   T22 requires a full-time dietician or a full-time person with a prescribed educational background be employed to be responsible for the food service operation.

   Comment: Not duplicative
   T-22 is more stringent with regard to education requirements but does not require a designated person in charge on premises during all hours of operation.

2. **Food Employee Knowledge/Food Safety Certification**
   CRFC requires at least one food safety certified individual for each retail food facility; specifies the mechanism for certification and duration of certificate validity (5 years); and requires all food employees to be trained and demonstrate knowledge pertinent to their assigned tasks.

   T22 requires a full-time dietician or a full-time person with a prescribed educational background to be responsible for the food service operation; requires that food service staff be trained in basic food sanitation techniques; and requires facility to have an ongoing educational program.

   Comment: Some overlap but not duplicative.
   T22 educational requirement may be stronger in educational requirement but there is no assurance for ongoing training or demonstration of competency. CRFC requires demonstrated ongoing certification in safe food handling for one individual at each food facility.

3. **Employee Health**
   CRFSC specifies when ill food workers must be restricted or excluded from work by both the person in charge and the local health officer; details the mechanism to allow excluded/restricted food employees to return to work; and requires food employees to notify the person in charge of specified diagnosed illnesses or skin conditions (cuts, sores, rashes) that might cause food and food contact surfaces to become contaminated by pathogenic organisms.

   T22 requires food employees to be excluded from duty when affected by a skin condition or communicable disease.

   Comment: Not duplicative.
   Local agency health programs are the investigators of food borne illness and they have the resources to test specimens/samples. In this area, local agency inspection is stronger/more effective. L&C would have to contact the local agency to investigate, thus delaying the process.

4. **Handwashing Facilities/Frequency/Practices**
   CRFSC contains requirements for handwash sink location(s), supplies, water temperature, and availability; details when and how food employees must wash hands; addresses the optional use of approved hand sanitizers; requires food employees to minimize bare had contact with ready-to-eat food; and requires signs to be posted at all handwash sinks reminding employees to wash hands.

T22 requires a fully equipped handwashing sink.

Comment: Not duplicative.
CRFC details required handwashing procedures, supplies, and frequency based on current scientific knowledge.

5. **Employee Personal Cleanliness**
CRFC specifies requirements for employee fingernail condition, use of hair restraints, and clean clothing.

T22 requires food service staff to wear clean clothing and hair restraints.

Comment: Some overlap but not duplicative.
T22 does not address fingernails.

6. **Employee Hygienic Practices**
CRFC addresses requirements for food employees with cold/flu/ allergy symptoms; describes requirements when jewelry is worn; specifies use requirements for single-use and cloth gloves; and prohibits eating/food tasting/drinking/use of tobacco in the kitchen.

T22 prohibits smoking in kitchen areas.

Comment: Minimal overlap but not duplicative.
CRFC provides specific hygiene practices for food employees to follow.

7. **Protection of Food from Contamination**
CRFC contains specific requirements for food protection during transportation, storage, preparation, holding, and serving; specifies cold storage methods for raw meats to minimize cross contamination; prohibits unauthorized access to food preparation/storage areas, prohibits unapproved food additives (including sulfites) to be used in food preparation; describes proper procedure for washing produce; and prohibits ice that has been used to cool the exterior of food containers and produce to be used as a food ingredient.

T22 requires ice used as a food ingredient to be from a sanitary source and to be dispensed in a sanitary manner; prohibits spoiled or contaminated food from being served; and prohibits unauthorized access to the kitchen area.

Comment: Some overlap but not duplicative.

CRFC contains numerous specific procedural requirements not included in T22.

8. **Temperature Control for Food Safety**
CRFC specifies hot and cold holding temperatures for potentially hazardous foods (PHF); establishes time limits for PHF preparation at ambient temperature; authorizes time as a public health control procedures for prepared PHF held at ambient temperature prior to serving; establishes safe practices and time/temperature relationships for cooling PHF; specifies safe final cooking temperatures for raw meats, poultry, fish, and eggs; details cooking procedures for raw PHF cooked in a microwave oven; requires that pasteurized eggs be used in recipes where the egg will not be cooked prior to service; details the safe procedure for reheating PHF for hot holding prior to service; and addresses requirements for frozen food storage and thawing methods.

T22 specifies hot and cold holding requirements for PHF and frozen food storage temperature requirements, requires food stored in refrigeration units to be covered, clearly labeled, and dated, and requires a written procedure be developed and followed for the safe use of leftover food.

Comment: Some overlap but not duplicative.
However, there are two conflicting sections:
CRFC provides current science-based procedures for time and temperature control for food safety and requires cold potentially hazardous food to be maintained at a holding temperature of 41 degrees F or below and hot potentially hazardous food be maintained at 135 degrees F or above. T22 regulations are somewhat out of date in this regard and allow cold holding up to 45 degrees F and require hot holding at 140 degrees F. SNF operators will have to comply with the most stringent requirements: [cold holding at a maximum 41 degrees F and hot holding at a minimum of 140 degrees F (combination of CRFC and T22)], which may result in some confusion for food facility operators and managers.

CRFC allows food cooling in a refrigeration unit to be uncovered during the cooling process and the food must then be covered after the cooling is complete (storage). T22 requires food in refrigeration units to be covered. SNF operators will have to comply with the most stringent requirement: food in refrigeration units must be covered as per T22.

9. Food from Approved Sources

CRFC addresses requirements for approved sources for food in general as well as specific requirements for thermally processed (canned) foods in hermetically sealed containers, eggs, milk, ice, fish, molluscan shellfish, and game animals; prohibits any food prepared in a private home from being served at a food facility.

T22 requires food from an outside resource to meet applicable federal, state, and local requirements, requires all food to be of good quality and obtained from approved source, and prohibits the use of food from unlabeled, rusty, swollen, leaking, broken, or dented cans/containers.

Comment: Some overlap but not duplicative.
CRFC has specific guidelines for specific foods.

10. Receipt of Food

CRFC requires all food products to be inspected upon receipt, specifies hot and cold receiving temperatures for PHF, and describes specific requirements for receiving and storing molluscan shellstock (oysters, clams, muscles, scallops) and raw shell eggs.

T22 has no specific requirements on this topic.

Comment: Not duplicative, as there are no T22 requirements.

11. Food Storage

CRFC requires food to be stored so as to be protected from sources of contamination, requires food containers to be stored in a clean, dry location at least 6 inches above the floor level to facilitate cleaning, prohibits food storage in restrooms, locker/dressing rooms, trash rooms, mechanical rooms, under sewer lines, under leaking water/fire sprinkler/condensate lines, and under stir wells, requires food containers to be labeled as to contents, prescribes procedures for storage or display of food in contact with ice, and describes procedures for the storage and location of food products that are to be returned to the manufacturer.

T22 requires food storage areas to be clean at all times, food products to be stored above the floor on shelves, racks, or dollies to facilitate cleaning; food products to be stored in a location not subject to sewage/wastewater backflow, condensate leakage, or rodent/vermin contamination; and all packaged food products be kept clean and dry at all times.

Comment: Some overlap but not duplicative.

However, there is one conflicting section:
CRFC requires food products to be stored 6 inches above the floor in storage rooms. T22 simply requires food storage to be "above the floor" with no specified distance. SNF operators will have to comply with the most stringent requirement: 6 inches above the floor as per CRFC.

12. **Specialized Processing Methods**
CRFC contains specific requirements for food facilities that utilize modified atmosphere food product packaging (vacuum packaging and other methods of packaging posing a botulism risk due to anaerobic conditions).

T22 has no specific requirements on this topic.

Comment: Not duplicative.
L&C does not have the authority to assess specialized processing methods.

13. **Food Display and Service**
CRFC requires sneeze guards for food products on serving/cafeteria lines; specifies requirements for self-service beverage dispensers; requires that consumers be provided with clean tableware for second trips to self-service salad /entrée bars ; requires that condiments be provided in dispensers or single-service packages; prohibits the re-service of food products that have been served at a consumer table; specifies that single-use utensils be stored and displayed in a manner that prevents contamination; and prohibits the washing for re-use of single-service utensils.

T22 has no specific requirements in this area.

Comment: Not duplicative, as there are no T22 requirements.

14. **Consumer Information**
CRFC requires that food be honestly presented with no intent to mislead or misinform consumers; details labeling requirements for packaged food products; requires chain restaurants to provide nutritional information on menus and menu boards; requires that all juice, egg and milk products served to residents at licensed health care facilities be pasteurized; and allows less than fully cooked PHF to be served at other retail food facilities if either the customer orders the food less than fully cooked or the food facility notifies the consumer orally or in writing that the food will be less than thoroughly cooked.

T22 requires milk, when served as a beverage, be Grade A pasteurized unless otherwise prescribed by a physician; and allows powdered milk to be used in cooking but not served as a beverage.

Comment: Minimal overlap but not duplicative.
CRFC provides specific guidance for consumers.
T22 has no requirements for highly susceptible populations and does not address pasteurized eggs or juice requirements.

15. Cleaning and Sanitizing Equipment

CRFC describes approved methods for washing equipment and utensils utilizing both a 3-compartment sink and a mechanical dishwashing machine; specifies the concentration of the chemical sanitizing solution or hot water time/temperature for the final rinse utilizing either method; requires testing supplies be available to measure sanitizing solution concentration; requires cleaned and sanitized equipment/utensils to be air-dried; requires utensils and food contact surfaces to be clean to sight and touch prior to use; details cleaning frequency for equipment and utensils after exposure to sources of contamination as well as in-use utensils held at ambient temperatures; specifies approved storage practices for in-use utensils; prohibits warewashing equipment from being used to clean mops or maintenance tools; and requires that sinks that are used to wash produce be cleaned and sanitized prior to beginning the produce wash.

T22 requires utensils used for eating, drinking, and food preparation be cleaned and disinfected after each use or discarded; describes methods for cleaning and disinfecting utensils and equipment; specifies the concentration of the disinfecting chemical solution or hot water rinse time/temperature for the final rinse when a 3-compartment sink is used; requires cleaned and disinfected utensils and equipment to be air-dried; and prohibits kitchen warewash sinks from being used for handwashing.

Comment: Some overlap but not duplicative.
However, there is one conflicting section:
CRFC requires cooking, eating, and drinking utensils that are washed in a sink using hot water as the final sanitizing rinse to immerse the utensils in water that is at least 171 degrees F for at least 30 seconds.
T22 requires a 2-minute immersion in 170 degree F water or a 30-second immersion in 180 degrees F water. SNF operators will have to comply with one of the more stringent requirements in T22.

16. Equipment, Utensils, and Linens

CRFC requires all equipment meet American National Standards Institute current standards for cleanability, durability, and toxicity; requires all electrical appliances to meet applicable Underwriters' Laboratory electrical safety requirements; that multi-use utensils and equipment be free of breaks, open seams, cracks, pits, and be in good repair; specifies the cleaning and sanitizing procedures for equipment that must be cleaned in place; limits the use of wood utensils and equipment; limits the use of copper utensils to food preparation that does not include high acid ingredients; prohibits the use of sponges for cleaning food contact surfaces; specifies construction requirements for can openers and hot oil cooking equipment to facilitate cleaning; and prohibits the application of non-food grade lubricants to food contact surfaces and equipment that requires lubrication.

T22 requires mechanical dishwashing machines to meet the sanitation requirements in National Sanitation Foundation Standard Number 3 as amended in April, 1965 (Note: this is way out-of date); and requires plastic ware, china, and glassware with chips, cracks, or loss of glaze be discarded.

Comment: Some overlap but not duplicative.
CRFC provides the enforcement agency the authority to approve equipment and materials use. T22 does not provide this authority to L&C.

17. Ventilation

CRFC requires all areas of the food facility to have adequate comfort ventilation; requires all toilet rooms to be vented to the outside air via window or exhaust fan; requires mechanical exhaust ventilation over cooking equipment (with a few exceptions); and requires heating, ventilation, and air-conditioning systems to be installed and operated in a manner that prevents contamination.

T22 requires dry food storage rooms to be ventilated and comfort ventilation in the dietetic service area.

Comment: Minimal overlap and not duplicative.
CRFC provides an extensive review of mechanical ventilation and facility temperature control.

18. Equipment Location and Installation

CRFC requires that adequate hot and cold food holding devices be provided; requires thermometers be provided in all refrigeration/freezer units; requires that probe thermometers be provided to monitor/measure

requires all plumbing and plumbing fixtures be installed and operated in accordance with local plumbing ordinances; requires that food preparation/warewash sinks and refrigeration/display case condensate lines drain to a floor sink or floor drain via indirect connection; and requires backflow prevention methods be employed where necessary.

T22 requires vacuum breakers be maintained in operating condition.

Comment: Not duplicative.
CRFC provides specific requirements for physical plant; water source, temperature of water for kitchen demands; boiler additives; plumbing; storage standards for potable water; disposal standards for liquid/refuse waste.
T22 provides guidance only for vacuum breakers.

22. Sewage and Wastewater Disposal

CRFC requires an approved system to dispose of sewage and wastewater to either the public sewer or a private septic system and allows for the installation of a grease trap/interceptor. If required by local conditions.

T22 has no requirements in this area.

Comment: Not duplicative, as there are no T22 requirements on this topic.

23. Trash and Refuse Disposal

CRFC requires that food facilities have a procedure and the means to dispose of all waste products generated; requires all refuse to be contained in nonabsorbent, durable, cleanable, leakproof, and rodent-proof containers with tight fitting lids; specifies frequency of refuse disposal; requires that soiled refuse containers be cleaned to minimize odors and vermin development; and requires all animal byproducts and inedible kitchen grease to be disposed of in conformance with the California Food and Agriculture Code.

T22 requires kitchen wastes not disposed by mechanical means (garbage disposal) to be kept in a clean, leakproof, nonabsorbent, tightly closed container and to be disposed of as frequently as necessary to prevent a nuisance or unsightliness.

Comment: Not duplicative.
CRFC provides specific procedural requirements for location of refuse, construction of container and cleaning of container.

T22 provides only guidance for type of storage and means of disposal.

24. Toilet Facilities

CRFC requires toilet rooms be clean, in good repair and supplied with toilet tissue for use by food employees during hours of food facility operation.

T22 has no specific requirements in this area.

Comment: Not duplicative.
Cal Code provides requirements for operation of facility, location, handwashing area and supplies
T22 requires only that the toilet be operational. L&C survey process only reviews resident toilets.

25. Lighting

CRFC specifies minimum amount of light needed in food preparation, food and equipment storage, and utensil washing rooms; and requires that exposed light bulbs be protected with shatterproof shields in all areas where unwrapped/unpackaged food or clean equipment, utensils, or linens are present.

T22 has no specific requirements in this area.

Comment: Not duplicative, as there are no T22 requirements in this area.

26. Poisonous and Toxic Materials

CRFC requires labels on all containers of poisonous/toxic materials and employee personal care items; requires that all poisonous/toxic materials and cleaning/sanitizing products be stored separately from food, food contact surfaces, equipment, utensils, and linens; and prohibits the storage of food, utensils, or single-use articles in any container that previously contained a poisonous/toxic substance.

T22 prohibits pesticide and other toxic substance and drug storage in the kitchen and in rooms used to store food, food preparation equipment, and utensils; and requires soaps, detergents, cleaning compounds, and similar substances to be stored in separate storage areas.

Comment: Some overlap but not duplicative.
CRFC addresses chemical labeling and facility employee personal item/medication storage not included in T22.

27. Employee Storage/Areas

CRFC requires designated areas for food employees to eat, drink and store personal items; requires that dressing rooms be provided if food employees are required to change into uniforms; requires that employee medicines be stored so as to prevent food contamination; and requires that a first aid kit be provided for employee use.

T22 requires kitchen employees' street clothing to be stored in a designated area separate from food and food service items.

Comment: Not duplicative.
CRFC requires dedicated changing room and medication storage areas.

28. Premises and Facilities

CRFC requires all areas of the food facility to be kept clean, fully operative, in good repair; requires the facility to be free from litter and items not necessary to the operation and maintenance of the facility; and requires that nonfunctional equipment be removed.

T22 requires kitchen areas to be kept clean and free from litter and rubbish; and requires utensils, counters, shelves, and equipment to be kept clean and maintained in good repair.

Comment: Some overlap but not duplicative.
CRFC requires non-functional equipment to be removed from the facility.

29. Vermin and Animals

CRFC requires that the premises of food facilities be free of vermin; specifies the maximum size of pass-through windows; specifies the type and placement of insect control devices within the food facility; prohibits (with the exception of fish in aquariums and dogs under the control of a uniformed law enforcement official) all animals and pets from being allowed in food preparation, food storage, and warewashing areas.

T22 requires kitchen areas to be protected from rodents, roaches, flies, and other insects.

Comment: Some overlap but not duplicative.
CFRC specifies the placement of insect control devices, and requires the use of screens and self-closing doors to prevent the entrance of insects and other pests.

30. Floor, Walls, and Ceilings

CRFC requires kitchens to be fully enclosed; specifies the type of allowed flooring and floor installation; specifies approved methods for cleaning floor surfaces; requires that walls and ceilings in food preparation areas, storage rooms, and restrooms be durable, smooth, nonabsorbent, and easily cleanable; and that floor mats and duckboards be removable and easily cleanable.

T22 has no specific requirements on this topic.

Comment: Not duplicative, as there are no T22 requirements.

31. Janitorial Facilities

CRFC requires a janitorial sink equipped with hot and cold water be provided; requires a designated storage room for the storage of all cleaning equipment and supplies; and requires that floor mops be stored to dry in a manner that does not soil walls, equipment, or supplies.

T22 has no specific requirements on this topic.

Comment: Not duplicative, as there are no T22 requirements.

32. Private Homes/Sleeping Quarters

CRFC prohibits sleeping accommodations in any room in a food facility where food is prepared, stored, or sold.

T22 has no specific requirement on this topic

Comment: Not duplicative, as there are no T22 requirements.

33. Trans Fat Ban

CRFC prohibits shortening, oil, margarine, or any food containing artificial trans fat from being used in the preparation of food at any food facility (including licensed health care facilities). Implementation date: 1/1/2010.

T22 has no specific requirements on this topic.

Comment: Not duplicative, as there are no T22 requirements.

ALL OTHER LONG-TERM FACILITY CATEGORIES

The narrative above summarizes the differences between the CRFC and T22 food services requirements for SNF. The CRFC requirements for the other

seven long-term health care facility categories (ICF, ICF/DD, ICF/DD-H, ICF/DD-N. CLHF, NF, and PDHRCF) are identical to the SNF requirements.

There are T22 regulations for three of the seven remaining categories (ICF, ICF/DD, and ICF/DD-H). As indicated previously, there are no specific T22 regulations for CLHF, PDHRCF, ICF/DD-N and NF. However, CLHF and PDHRCF are authorized by the CHSC to be licensed utilizing SNF T22 regulations with a few very minor, non-substantive exceptions (see Appendix D for SNF requirements that apply to CLHF and PDHRCF food services). A narrative comparison summary of CRFC and T22 requirements for CLHF and PDHRCF would be nearly identical for the narrative comparison for SNF above. Therefore, the information will not be duplicated in this report. Likewise, the T22 regulations for ICF, ICF/DD, and ICF/DD-H are very similar to SNF T22 requirements and will also not be duplicated in this report.

SUMMARY

As can be seen from the narrative comparison of the CRFC and T22 requirements for food services at SNF, there is some overlap of requirements but very little duplication. There are four areas of conflict (see Item #8, #15 and # 23 above). The same areas of conflict exist for the other five long-term health care facility categories for which T22 regulations exist. However, the conflicts should not pose a compliance problem for SNF operators, who will have to comply with the most stringent of the conflicting requirements.

The CFR requirements are so general in nature that there is no conflict and no duplication with CRFC requirements whatsoever. The comparison tables in Appendix E detail the regulatory requirements for each long-term health care facility category, including the comparison with CFR requirements.

EDUCATION AND TRAINING – COMPARISON OF LOCAL AGENCY INSPECTOR AND L&C SURVEYOR REQUIRMENTS

LOCAL AGENCY HEALTH INSPECTOR

The CHSC requires that local environmental health agency staff who inspect retail food facilities for compliance with CRFC requirements be a Registered Environmental Health Specialist (REHS) or an REHS-in-training, both designations being commonly referred to as "Health Inspector." The CHSC also specifies the educational and training requirements for obtaining an REHS and for obtaining approval from the CDPH Environmental Health Specialist Registration Program to be hired as an REHS-in-training.

The educational background for a Health Inspector includes a four-year degree with a minimum of thirty semester units of CDPH approved basic science courses to include: biology, general chemistry, organic chemistry or physics, microbiology, and college algebra or calculus. Persons wishing to take the REHS exam submit an application and college transcript to the CDPH Environmental Health Specialist Registration Program for review. The CDPH Registration Program staff review the application package to determine whether the applicant has the appropriate college courses and degree to be eligible to take the REHS exam without on-the-job training (for example, an applicant with a Bachelor's degree in Environmental Health can take the exam immediately upon graduation from college) or needs additional courses and training to be eligible to take the REHS exam.

Typically, an individual with only the prescribed basic science courses will be hired as an REHS-in-training for a period of two years in order to qualify to take the exam. During that two-year training period, the local agency will train the REHS candidate in the correct interpretation and application of the CRFC and will closely supervise the candidate's performance of standardized retail food facility inspections. Local enforcement agencies provide on-going training to inspection staff via staff meetings and program specific courses sponsored by state and federal agencies as well as trade associations. Beginning in 2010, all persons actively working as an REHS will need to obtain mandatory, annual continuing education credits in order to maintain the REHS designation.

L&C SURVEYOR

The L&C operational review of food services at long-term health care facilities is performed by a surveyor team composed primarily of Registered Nurses, but may also include Nutrition Consultant Specialty Surveyors who are Registered Dietitians. The team is composed of 1 to 4 surveyors, depending on the facility size and the purpose of the survey (licensing or certification).

Registered Nurse's education and professional training includes direct patient health care and science courses but does not include food science, food service food safety or food service management.

The educational background of the Nutrition Consultant Specialty Surveyors includes a Master's degree specific to nutrition and a national registration as a dietitian. Registered Dietitian's education and professional training includes patient care and science-based study and training in food service operations, food service management and operations, quantity food production, food sanitation and foodborne illness. Additionally, the Nutrition Consultant Specialty Surveyors have experience in the operation of food service and nutrition care.

The Nutrition Consultant Specialty Surveyors provide food services training to nurse surveyors including: lecture, observation of a survey conducted by Nutrition Consultant Specialty Surveyor, demonstration of competency of food service monitoring activities, interviews with food service staff, and observation skills. The training involves a two hour lecture and 8 to 12 hours of field training. The training provided for surveyors is intended to provide understanding of the link between food services and resident/patient care.

Although there is a statewide group of nine Nutrition Consultant Specialty Surveyors, their duties extend beyond survey participation. They are only available to participate on approximately 20 percent of the SNF surveys as either a survey team member or more often, through telephone consultation with the nurse surveyors on food service observations and findings. The specialty consultant's participation on ICF surveys is minimal although they are accessible by telephone to the survey team.

INSPECTION/SURVEY PROCESS – COMPARISON OF LOCAL AGENCY INSPECTION AND L&C SURVEY

LOCAL AGENCY INSPECTION

All retail food facility operators/owners must obtain a license from the local enforcement agency prior to commencing business. The initial licensure inspection involves a comprehensive review of the physical facility as well as a thorough discussion of required safe food handling protocols based on the facility menu and method of service. Retail food facilities with complex food handling processes also are required to have written procedures in place to document that food safety protocols are met on a daily basis.

After licensure, local agency inspectors conduct routine, unannounced inspections of retail food facilities on a frequency determined by local agency policy and ordinance. Statewide, the frequency ranges from two to four times per year per retail facility. Fees are paid by the retail facility operator to cover the cost of the inspection. The fees are based on the average time spent in the facility type (restaurant, bakery, skilled nursing facility kitchen, etc,) and are set by local ordinance. Statewide, the average time spent in a retail food facility kitchen is ninety minutes. The larger the kitchen in terms of space and meals produced, the longer the time spent during the inspection.

The inspection is conducted via observation, interview and applicable record review. The main focus of the inspection is an evaluation of the identified foodborne illness risk factors and review of the intervention strategies required by CRFC. The majority of the 62 local agencies utilize a checklist similar to the model checklist included in Appendix F. The checklist includes all items that must be evaluated during the inspection, with a means to document what was

actually observed during the inspection as well as information gleaned from discussion with the person-in-charge at the time of the inspection.

L&C SURVEY – FEDERAL CERTIFICATION

L&C completes federal surveys within a 15 month window of time for SNFs and ICFs. Although the survey team spends typically four days on the survey, a relatively small portion of time is spent in the facility kitchen. The federal survey requires a specific survey process which looks at activities being performed and the activities' impact on food service operation systems.

Surveyors spend 2 hours on kitchen observations and a minimum of two meal observations. Deficient practices that require further investigation or observation will increase the time spent. An immediate jeopardy significantly increases the time to an average of 12 hours and would likely extend the length of the survey by additional days (6 hours to 5 days). In the time period between 05/2008 and 04/2009 there were 11 immediate jeopardy events in SNFs.

The survey process is comprised of observation, interview and, if relevant to the findings, a review of the policies and procedures and the facility diet manual. This includes evaluating whether food is handled safely from arrival in the facility until delivery to the resident/client. The food service staff activities are observed in food handling by observation for cross contamination: time and temperature in storage, preparation, cooking, cool down, holding and serving, and hand washing. Food storage environment and approved sources of the food used are evaluated. Observations are made for evidence of pest activity. The activities of cleaning and sanitizing surface areas and dishware, and cooking equipment washing, (both manual and machine) is observed.

Meal service observations include tray line as well as the delivery and distribution of meals to residents/clients. Evaluations includes: adherence to menu, adherence to therapeutic diets and resident/client preferences, appearance, serving temperature, food fortification, portions and menu composition meeting the recommended dietary allowance for the population served.

There is no survey guidance for evaluation of the facility's physical environment such as structure, equipment, water pipes, sewage lines, exhaust system, grease traps, etc.

Interviews of the food service supervisor, administrator, dietitian, other staff, and residents/clients are required as part of information gathering. If findings indicate there may be a facility food service system inadequacy, then the facility Policies and Procedures manual and Diet Manual are reviewed for the relevant information.

The costs of providing L&C certification services and activities are recovered through federal reimbursements.

L&C SURVEY – STATE LICENSURE

The state licensing surveys are completed upon licensure of a facility and periodically in conjunction with a federal survey. In these instances, the kitchen survey observations are not duplicated. The state licensing survey includes staffing requirements and qualifications as it relates to the health care model. Also included are other food service activities that did not occur on the federal survey observation.

The costs of providing L&C licensing services and activities are covered by long-term health care facility license and penalty fees.

COMPARISON OF STATE VERSUS LOCAL INSPECTION/SURVEY SCOPE

In order to participate in the federal Medicare and Medicaid programs, the state, pursuant to federal regulations, conducts recertification surveys of skilled nursing facilities no later than 15 months after a facility's prior survey, and maintains an average of 12 months between recertification surveys of skilled nursing facilities statewide. The scope of CDPH's authority for federal certification inspections is limited to enforcing provisions set forth by federal regulations. These federal requirements include each facility's employment of a qualified dietician, employment of sufficient support personnel competent to carry out the functions of food services, and providing all residents with a nourishing, palatable, well-balanced diet that meets their daily nutritional and special dietary needs. Surveyors may recommend fines for facilities for violations that present immediate jeopardy to the residents' health and safety as a remedy to CMS.

The state licensing survey requirements do not include the facility's physical environment such as structure, specific equipment, water pipes, sewage lines, exhaust system, grease traps, etc.

There are non-duplicative portions of the survey and inspection processes. The oversight categories performed by L&C that are not included in local agency inspections are:

- nutritious menus: food type, variety, cultural, portions
- resident/client choice
- therapeutic diets preparation
- meal distribution
- staff knowledge
- managers oversight activities
- policies and procedures
- the diet manual.

The local agency inspection includes the following items not included in the L&C survey of food services:

- review of equipment specifications for commercial food service
- beverage dispensing machines
- exhaust hoods
- food safe counters and flooring
- physical structure such as repair of tiles, walls, counters, equipment, power, piping, fuel containers
- repair needs
- equipment replacement
- sewer lines
- construction changes of physical plant
- pest infestations.

Each inspection/survey entity has unique and separate compliance authority. L&C oversees the nutrition care component of food service and requires immediate correction of immediate jeopardy deficiencies. Local agency health inspectors are the lead on facility food borne illness investigations and sewer line breaks. Additionally, the local agency is in charge of resolution of inadequate physical plant structures such as: decaying floors, unsanitary counter, broken walls, ceiling and counters, and utility problems, i.e. gas, water, power.

L&C has no authority to stop the facility from serving food that may be unsafe for residents/clients due to unsanitary conditions of handling or preparing. L&C does not have the capacity or staff for collection or testing of food samples or evaluating the repair and clean up of sewage and broken sewer lines. L&C does not have the authority to halt food production as would be warranted in this situation. Local agencies do have the authority and staff expertise to investigate and supervise the mitigation of these problems when they occur at long-term health care facilities.

ENFORCEMENT PROTOCOLS – COMPARISON OF STATE AND LOCAL AGENCY OPTIONS

LOCAL AGENCY ENFORCEMENT

CRFC provides a variety enforcement options to local agencies to gain compliance with code requirements:

During the inspection process, observed CRFC violations are explained to the retail food facility operator along with the reasons why the requirement is important to food safety. At the completion of the inspection, the facility operator receives a written "Official Notice of Violation" which includes a list of the violations noted and a specified time to correct each violation. The time period

specified to correct the violation(s) depends on the food safety risk the violations poses to the public. The local agency will schedule a re-inspection on or after the specified date to verify that the violations have been corrected.

When an imminent health hazard is found during an inspection, the impacted area of the facility is closed. In many cases, the entire facility must be closed, such as in the case of backed up sewer lines flooding the kitchen floor. Once closed by the local agency, the facility must remain closed until the violation has been corrected and written permission to reopen is granted.

Based upon inspection findings or other evidence, local agency staff has the authority to impound food and equipment for up to 30 days. Typically, an impound will be placed on food that is unsafe for consumption due to contamination or temperature abuse and the facility owner refuses to voluntarily discard the food. Impounds on equipment are usually placed due to malfunction and deterioration to a point that food safety is compromised. During the 30-day, period there is a prescribed process in CRFC to determine the ultimate disposition of the food or equipment.

When a food facility has the same violations observed during numerous sequential inspections or if the facility operator refuses to correct significant violation(s) that does not warrant facility closure, local agencies typically conduct an administrative hearing with local agency management. The goal of the hearing is to develop a mutually agreed upon plan for improvement. If the facility operator still does not cooperate, the facility license can be suspended or revoked. Since violations of the CRFC are misdemeanors (with a few exceptions), retail food facilities with significant food safety violations can be subject to criminal prosecution. Civil actions utilizing the California Business and Professions Code are also an option.

Many local agencies publish retail food facility inspection findings on their respective agency websites. CRFC requires that a copy of the latest inspection report be provided to any customers upon request. Six local agencies utilize a grading/placarding public notification system whereby a grade (A, B, or C) or color (green, yellow, or red) card indicating the how well the facility scored on the last routine inspection. All of these public notification practices serve as a powerful incentive for retail food facility operators to minimize the number of violations present during inspections and to quickly correct violations that are observed by local agency staff.

CDPH L&C ENFORCEMENT

The L&C program enforcement options differ for state licensing surveys and federal certification surveys, but both require a facility to submit a written plan of

correction. In addition, the written survey findings must be posted where it is readily accessible for residents/clients and public to review.

The federal remedies for deficient food service practices include: submission of an acceptable plan of correction, directed plan of correction, or submission of an acceptable plan or correction prior to the surveyors leaving the building in the event of an immediate jeopardy. Citations can be issued for state surveys and carry a monetary penalty of $100 to $1,000.

Revisits to assure implementation of the corrections for food service noncompliance are only conducted for federal surveys when an immediate jeopardy deficiency was issued. From 5/2008 through 4/2009 11 immediate jeopardy level were called in sanitary conditions on a SNF federal survey.

PLAN CHECK PROCESS – JOINT EFFORT

CRFC requires local agency staff to review and approve plans for new and remodeled retail food facilities prior to construction. The purpose of the plan check process is to save the facility operator time, money, and frustration by ensuring that, when completed, construction and equipment comply with code requirements. The structural and equipment requirements in the CRFC provide the foundation for safe food handling practices.

L&C is required by California Building Code (CCR Title 24) to approve plans for alternations to long-term health care facility food services physical plant. When facilities request an "Alternate Method of Compliance" for food service sections of Code, the Office of Statewide Health Planning and Development (OSHPD) consults with L&C. L&C reviews the proposal for adequate space, equipment and food supply storage to meet the needs of the residents and food service requirements in T22. The local environmental health agency has approval authority for commercial grade equipment, location and installation of equipment, water supply, sewage disposal, and building materials for food counters, walls, ceilings, and flooring.

The process of health facility building approvals includes all three entities: OSHPD, L&C, and the local agency. There are no apparent conflicts between CCR Title 24 and CRFC requirements for food services at long-term health care facilities. Each has a specific portion of the oversight and approval that is critical to meeting national, state and local standards of practice and building structure. L&C assures the facility building has adequate space, equipment, and food storage capability to satisfy the needs of the residents/clients. The building, construction, and safety of the equipment selected are assured by OSHPD and the local agency staff.

COMPLAINT RESPONSE – COMPARISON OF STATE AND LOCAL AGENCY PROTOCOLS

In addition to routine retail food facility inspections, local agency staff responds to complaints from consumers. Depending on the nature of the complaint, the response can be a phone call to the facility operator (minor complaint such as overflowing trash bin in the customer restroom) to an immediate site visit (sewage back-up in the kitchen). The enforcement actions taken by local agency staff for violations observed during a complaint inspection are the same as those that would be taken following a routine facility inspection.

L&C conducts licensing surveys in response to complaints that are received by the district office. Long-term care facility complaints that are an Immediate and Serious threat are initiated within 24 hours. Immediate and Serious Threat is a situation in which the provider's noncompliance with one or more federal or state requirement has caused, or is likely to cause, serious injury, harm, impairment, or death of a resident. Examples of Immediate and Serious Threat and Immediate Jeopardy include but are not limited to the following: physical abuse, transfer and discharge issues, sexual abuse, verbal abuse, psychological abuse, maintaining comfortable temperatures, and food or staffing shortages. All other complaints are initiated within 10 working days.

SNF and ICF VIOLATION/DEFICIENCY STATISTICS

LOCAL AGENCY INSPECTION CITATIONS

There is no statewide, centralized data collection system for retail food facility violations noted during inspections by local agencies. In addition, the inspection of long-term health care facilities by local agency staff began in the fall of 2007, so there is minimal data available on the inspection results for this type of retail food facility. Therefore, no local agency inspection statistical data is included in this report.

L&C STATE LICENSING SURVEY CITATIONS

State regulations are most frequently used on initial licensing of a health facility and complaint investigation surveys. The citing of State food service regulations for Skilled Nursing and all Intermediate Care Facilities have increased significantly on an annual basis from 2004 - 2007 (See table below).

The following regulation sections were cited: T22 Sections 72333 - 72351: Sections 73323 - 73328; and Sections 76881 - 76892.

Approximate number of facilities: 1250 SNFs and 1230 ICFs

Year	Total number of annual T22 citations for food services
2007	2774
2006	2687
2005	1889
2004	1025

Note: During this time period, Local Agency inspections and food permits of SNF and ICF facilities was very limited. Between 1992 and 2007 only one Local Agency conducted inspections. In 2007, the total number of Counties conducting inspections has increased to approximately 42 local agencies.

FEDERAL CERTIFICATION SURVEY CITATIONS

Federal regulations are used for certification surveys, which are conducted upon initial certification and annually within a 9 to 15 month time span from the previous survey. All SNF surveys include verification of compliance with food service regulations; whereas the standard ICF survey process does not include a comprehensive food service regulatory review. Therefore only a portion of ICF facilities completed received a full certification survey.

The tables on the following page identify CFR food service regulations that were cited in California during two twelve-month time periods from 2007 through 2009. In addition, the tables identify the percentage of California facilities cited for noncompliance as compared to the percentage of similar facilities in the nation.

Table A: **2/2007 through 3/2008**
Skilled Nursing Facility citations for CFR 483.35 (i) (1)(2)(3)

Federal Regulations	Total Number of CA Citations	Comparison of CA with US average	
		CA Of 1,262 providers, % cited	**US** Of 15,798 providers, % Cited
483.35(i)(2) sanitary conditions	699	55.39	34.06
483.35 (i)(1) approved food source	1	.08	.05
483.35(i)(3) garbage disposal	79	6.26	3.35

Table B: **5/2008 through 4/2009**
Skilled Nursing Facility citations for CFR 483.35 (i) (1)(2)(3)

Federal Regulations	Number of Citations	Comparison of CA with US average	
		CA Of 1,262 providers, % cited	**US** Of 15,798 providers, % Cited
483.35(i)(2) sanitary conditions 483.35 (i)(1) approved food source	710	56.62%	34.78%
483.35(i)(3) garbage disposal	78	6.22	3.13

Note: In Fall 2008, Sanitary Conditions and Approved Food Source were combined under 483.35(i)(2)

These tables demonstrate that California certified long-term health care facilities are significantly less in compliance with CFR requirements than similar facilities in other states, which may be, in part, due to antiquated L&C regulations and L&C limited enforcement options. Local agency regulation of long-term health care facilities utilizing the enhanced enforcement options of the science-based CRFC will likely, over time, increase facility compliance rates with the more generalized CCR and CFR requirements.

CONCLUSIONS

This report compares the regulatory codes, inspection procedures, and staffing utilized by CDPH L&C and local environmental health agencies when conducting the mandatory surveys/inspections.

The CRFC (enforced by local environmental health agencies) is much more comprehensive, scientifically current, and public health protective than either CCR T22 or the CFR (enforced by L&C) as they pertain to food services. There are four areas of conflict and some overlap between the CRFC and T22. However, none of these differences should pose a compliance problem for facility operators. If the more stringent code is followed, the facility will be in compliance with both codes. On the issue of the CFR, the Centers for Medicaid and Medicare Services (CMS) provide guidelines on how to apply the three very general food services requirements. However, guidelines do not have force of law.

While some overlapping regulatory requirements exist, the scope of the L&C food services inspection survey is very different than the local agency inspection. L&C survey staff is most often Registered Nurses who may or may not have up-to-date food safety knowledge. Local agency staff are Registered Environmental Health Specialists who have been trained to focus on the specific risk factors that are known to cause foodborne illnesses and outbreaks during food facility inspections.

L&C statistical data indicates that the frequency of food service care deficiency citations is increasing on an annual basis and that, in comparison to other states, California does not compare favorably. Local agencies have a higher inspection frequency compared to L&C. Local agency staff also has more enforcement authority and options available to gain compliance than does L&C. In the case of foodborne illness outbreaks and sewage back-ups, L&C contacts local agency staff to be the lead agency during the investigation and correction.

Patients/residents at long-term health care facilities are considered a highly susceptible population in that they often have compromised medical and physical conditions that place them at high risk for the complications of foodborne illness.

In addition, they are a "captive audience" because they do not have any choice but to consume the food that the facility provides. Accordingly, patients/residents at long-term health care facilities deserve at least the same food safety protections as members of the general public who dine at restaurants in their community.

CDPH concludes that the CRFC, enforced by local environmental health agencies, provides greater food safety protections than the applicable requirements in either Title 22 or the CFR. Consequently, it is appropriate to continue to include long-term health care facilities in the definition of "food facility" in the California Retail Food Code and to continue local environmental health agency licensure and inspection of these facilities.

APPENDIX A

CALIFORNIA RETAIL FOOD CODE

APPENDIX B

L&C NOTIFICATION LETTER

APPENDIX C

CALIFORNIA RETAIL FOOD CODE

"GRANDFATHER CLAUSE" GUIDANCE DOCUMENT

APPENDIX D

CALIFORNIA CODE OF REGULATIONS, TITLE 22

SKILLED NURSING FACILITY

INTERMEDIATE CARE FACILITY

INTERMEDIATE CARE FACILITY/
DEVELOPMENTALLY DISABLED

INTERMEDIATE CARE FACILITY/
DEVELOPMENTALLY DISABLED – HABILITATIVE

CONGREGATE LIVING HEALTH FACILITY

PEDIATRIC DAY HEALTH AND RESPITE CARE
FACILITY

APPENDIX E

COMPARISON TABLES

SKILLED NURSING FACILITY

INTERMEDIATE CARE FACILITY

INTERMEDIATE CARE FACILITY/
DEVELOPMENTALLY DISABLED

INTERMEDIATE CARE FACILITY/
DEVELOPMENTALLY DISABLED – HABILITATIVE

CONGREGATE LIVING HEALTH FACILITY

PEDIATRIC DAY HEALTH AND RESPITE CARE
FACILITY

APPENDIX F

OFFICIAL NOTICE OF VIOLATION SAMPLE REPORT FORM