

June 16, 2016

Senator Ed Hernandez, Chair
Senate Committee on Health
State Capitol, Room 2191
Sacramento, CA 95814

RE: AB 2079 (Calderon)

Dear Senator Hernandez:

We are writing in regards to AB 2079 (Calderon), a bill aimed at modernizing California's staffing standard for freestanding skilled nursing facilities. CANHR has been working to improve nursing home staffing levels for over thirty years because nothing matters more to nursing home residents than the availability of sufficient, well qualified staff to meet their care needs.

CANHR strongly supports AB 2079's primary requirement, which would increase the minimum staffing standard to 4.1 nursing hours per resident day. We also have recommendations to strengthen the bill.

Today's staffing standard is dangerously deficient. California has not increased minimum staffing requirements for nursing homes since AB 1107 (Cedillo, Chapter 146, Statutes of 1999) did so in 1999 as part of the Budget Act of that year. Effective January 1, 2000, AB 1107 amended Health and Safety Code section 1276.5 to require nursing homes to provide at least 3.2 nursing hours per resident day (hprd), a standard that was widely considered inadequate at the time.

California Nursing Home Residents are Endangered by Neglect Due to Inadequate Staffing

Understaffing is causing great harm to nursing home residents. Residents and their families tell us daily that insufficient staff is the root cause of poor care that has caused bedsores, avoidable falls, severe injuries, infections, dehydration, malnutrition, chemical restraints, repeated hospitalizations and preventable deaths.

Despite contentions by nursing home operators that self-reported data indicates the quality of their care is improving, there is tremendous evidence that the quality of care is often very poor, sometimes dangerously so. CMS data from its [2015 Nursing Home Data Compendium](#) shows that California nursing homes had above average percentages of residents who suffered from pressure sores, or were restrained, incontinent or tube fed.

In November 2014, the Sacramento Bee published a three-part series on the performance of nursing home chains in California, [Unmasked: How California's Largest Nursing Home Chains Perform](#). The Bee's investigation found that nine out of ten of the state's largest nursing home chains had below-average staffing or turnover in 2012. The Bee has also published [several articles since June 2015](#) on California's largest nursing home operator, reporting that three of his nursing homes have been decertified or closed due to life threatening conditions and that some of his facilities were under investigation by state and federal law enforcement agencies.

In February 2014, the [HHS Office of Inspector General reported](#) that one-third of Medicare beneficiaries were harmed during short rehab stays in skilled nursing facilities after hospitalization. For 22 percent, the harm was so severe the OIG called it an "adverse event." Physician reviewers concluded 59 percent of the harm was preventable and could be attributed to substandard treatment, inadequate resident monitoring, and failure or delay of necessary care.

Complaints about California nursing homes have increased dramatically in the last two years. [Department of Public Health data](#) show that the number of complaints jumped to 7,609 complaints in fiscal year 2014-15, an increase of over 16 percent from the prior year. Through the 3rd quarter of the current fiscal year, the number of complaints has continued to rise rapidly and is on pace to exceed the number of complaints filed in FY 2011-12 by nearly 2,000 complaints.

Nursing home residents are in great jeopardy due to the Department of Public Health's failures to respond to complaints. An [October 30, 2014 report by the California State Auditor](#) found that, as of April 2014, DPH had more than 11,000 open nursing home complaints, many of which indicated a serious safety risk to residents.

AB 2079 Adopts National Safe Staffing Standard

AB 2079 would gradually increase the minimum-staffing standard for freestanding skilled nursing facilities from 3.2 to 4.1 nursing hours per resident day. Once the phase-in of its requirements are completed on January 1, 2020, it will require at least 1.3 hours of care per resident each day by licensed nurses and at least 2.8 hours of care per resident each day by certified nursing assistants (CNAs).

This approach would adopt the recommendations made in a 2001 report ordered by Congress that found that these staffing levels are minimally necessary to protect nursing home residents from harm. Although the 2001 study is dated and its staffing recommendations are now less than ideal, adopting its recommendations would bring far-reaching improvements in nursing home care throughout California.

Staffing Increases are Pre-Funded

California has already invested more than enough money in nursing home care to fund the staffing increase sought by AB 2079. The Legislature has increased Medi-Cal rates paid to skilled nursing facilities numerous times since 2004 – increasing annual payments and average rates by more than 50 percent in the last ten years – while it has not adjusted the minimum

staffing standards for nursing homes even once since 1999. Current annual Medi-Cal payments to nursing homes exceed \$4.3 billion.

Under existing legislation, the explosive growth in Medi-Cal payments to nursing homes will continue through FY 2019-20, when overall spending is projected to reach \$5.1 billion without any change to the size of the nursing home population covered by Medi-Cal.

The primary purpose of these funding increases was to improve nursing home staffing. AB 2079 will provide a long needed requirement that nursing homes actually increase their staffing levels to ensure better care.

Recommendations to Strengthen AB 2079

Increasing the minimum staffing to 4.1 nursing hours per day would be an important step in the right direction, but other changes are needed to improve AB 2079 and provide safe staffing levels for California nursing home residents.

We strongly recommend that the bill be amended to remove the requirement that the Department of Public Health adopt regulations setting forth the minimum number of direct care service hours required in skilled nursing facilities. There is no need for this requirement because AB 2079 already sets the minimum requirements and there is no reason to expect that the Department would enhance them in any way. The Department has ignored or fought existing requirements to establish such regulations in the past and shown almost no interest in ensuring that California nursing homes are properly staffed. Removing this requirement will help ensure that AB 2079's standards are not misperceived as being contingent on the promulgation of regulations by the Department.

The exemption for distinct part skilled nursing facilities operated by hospitals should be deleted. Hospital-based skilled nursing facilities that serve the sickest residents should not be governed by the extraordinarily inadequate existing standard.

The bill should prohibit skilled nursing facilities from counting nursing staff members working in subacute care units that are subject to separate, higher staffing levels established at 22 CCR §51215.5.

Instead of *permitting* the Department of Public Health to issue a citation for violations of the staffing requirements, the bill should *require* that a citation be issued when a facility does not meet the staffing requirements.

AB 2079 originally included shift ratios that were deleted from the bill by the Assembly Appropriations Committee. We believe shift ratios should be established, although not necessarily the ratios originally proposed by the bill, and that shift ratios should be set for both licensed nurses and certified nursing assistants.

The bill would require a skilled nursing facility to provide a daily minimum of 1.3 hours of direct care by licensed nurses but fails to establish minimum hours of care by registered nurses (RNs).

Numerous studies have established a strong connection between the adequacy of RN staffing and the quality of care in nursing homes. We recommend adding the following language for this purpose : The daily minimum 1.3 hours of direct care by licensed nurses shall include at least 0.75 hours of direct care per resident by registered nurses, excluding the Director of Nursing.

We recommend restoring the existing prohibition in Health and Safety Code §1276.65(b) that persons employed to provide services such as food preparation, housekeeping, laundry or maintenance services shall not provide nursing care to residents and shall not be counted in determining ratios under this section.

AB 2079 would leave in place severely low staffing standards for intermediate care facilities and special treatment programs. These standards are equally in need of reform and should be revised to establish safe staffing levels for residents who live in these facilities.

California must raise its dangerously low minimum staffing requirements so that nursing homes are prepared to meet the heightened needs of today's residents and are measured against a modern standard rather than an outdated requirement set in the last century. Inadequate staffing is the single most important cause of the neglect and human suffering that is so commonplace in many California nursing homes today.

We urge you to strengthen and support AB 2079.

Sincerely,



Patricia L. McGinnis
Executive Director

cc: Members, Senate Health Committee
Assembly Member Ian Calderon