

Report to the Legislature

As required by Welfare and Institutions Code §14126.033 (Assembly Bill 1629, Frommer, Chapter 875, Statutes of 2004)

04/27/2007

Executive Summary

Welfare and Institutions (W&I) Code §14126.033 (AB 1629, Frommer, Chp. 875, Statutes of 2004) requires the California Department of Health Services' (CDHS') Licensing and Certification Program (L&C) to provide specific information about various indicators of the quality of care provided in freestanding skilled nursing facilities (SNFs) to the Legislature by January 1, 2007 (Appendix A). This information must cover the three years immediately prior to the passage of AB 1629 (state fiscal years [FYs] 2002-03, 2003-04, and 2004-05). The specific reporting requirements contained in this statute are the following:

- (A) The number and percent of freestanding SNFs that complied with minimum staffing requirements (3.2 nursing hours per patient-day [NHPPD]).
- (B) The staffing levels prior to the implementation of this article.
- (C) The staffing retention rates prior to the implementation of this article.
- (D) The numbers and percentage of freestanding SNFs with findings of immediate jeopardy, substandard quality of care, or actual harm, as determined by the certification survey of each freestanding SNF conducted prior to the implementation of this article.
- (E) The number of freestanding SNFs that received state citations and the number and class of citations issued during calendar year 2004.
- (F) The average wage and benefits for employees prior to the implementation of this article.

L&C's findings in each of these areas are as follows:

(A) and (B) The number and percent of freestanding SNFs that complied with the minimum statutorily mandated staffing requirement of 3.2 NHPPD; the staffing levels prior to the implementation of this article.

L&C audited a random sample of open, active, freestanding SNFs for compliance with the 3.2 NHPPD requirement. In each of the three state fiscal years under review (FY 2002-03, FY 2003-04, and FY 2004-05), L&C audited the sample SNFs on 24 randomly selected days. Most SNFs were compliant on most of the 72 audited days. The mean statewide NHPPD ratio over all audited days was 3.31 in FY 2002-03, 3.34 in FY 2003-04, and 3.37 in FY 2004-05. The lower border of the region in which the population parameter is most likely to be found for all three of these population estimates was above 3.2 NHPPD. However, relatively few SNFs were compliant on all audited days. In FY 2002-03, 15 percent of SNFs were fully compliant. In FYs 2003-04 and 2004-05, that percentage rose to 20 and 24 percent, respectively.

(C) The staffing retention rates prior to the implementation of this article.

Using the self-reported facility data from the Office of Statewide Health Planning and Development (OSHPD), L&C found that retention rates for Registered Nurses (RNs) and Licensed Vocational Nurses (LVNs) increased between calendar years 2002 and 2005. Specifically, in 2002 966 SNFs (80 percent) had retention rates for RNs and LVNs greater than or equal to 50 percent; of that number, approximately one third (322 SNFs) had RN/LVN retention rates between 60 percent and 70 percent. In 2003 and 2004, RN/LVN retention rates were comparable to those in 2002, increasing slightly in 2005. In 2005, 1,048 SNFs (86 percent) had retention rates for RNs and LVNs equal to or greater than 50 percent; of that number, approximately one third (287 SNFs) had RN/LVN retention rates between 60 percent and 70 percent. Retention rates for Certified Nurse's Assistants (CNAs) were slightly lower than those for RNs and LVNs. In 2002, about three fourths (908 SNFs) had retention rates for CNAs greater than or equal to 50 percent; of that number 23 percent (282 SNFs) had CNA retention rates between 60 percent and 70 percent. Retention rates for CNAs increased slightly in 2003, but returned to 2002 levels in 2004 and 2005.

(D) The numbers and percentage of freestanding SNFs with findings of immediate jeopardy, substandard quality of care, or actual harm.

Although the number of SNFs surveyed between FY 2003-04 and 2005-06 declined from 1,413 to 1,219, the number of findings of immediate jeopardy, actual harm, and substandard quality of care increased over the same period. Specifically, immediate jeopardy findings rose from 6 (0.4 percent of surveyed SNFs) in FY 2003-04 to 50 (4 percent of surveyed SNFs) in FY 2005-06; actual harm findings rose from 104 (7 percent of surveyed SNFs) in FY 2003-04 to 290 (24 percent of surveyed SNFs) in FY 2005-06; and substandard quality of care findings rose from 13 (1 percent of surveyed SNFs) in FY 2003-04 to 40 (3 percent of surveyed SNFs) in FY 2005-06. Data from FYs prior to 2003-2004 is not available because the federal certification survey data system only retains the current and three previous survey cycles. Additionally, data from FY 2003-04 is slightly under-reported by this system.

(E) The number of freestanding SNFs that received state citations and the number and class of citations issued during calendar year 2004.

In calendar year 2004, L&C issued 11 type AA citations, 73 type A citations, and 384 type B citations (see Appendices D and E for definitions of citations). In addition, L&C issued three citations for willful material falsification/willful material omission (WMF/WMO). Ten facilities received AA citations, 64 facilities received A citations, 233 facilities received B citations, and three facilities received WMF/WMO citations. With the exception of WMF/WMO citations, a small number of facilities received more than one of each type of citation.

(F) The average wage and benefits for employees prior to the implementation of this article.

Pay for RNs, LVNs, and CNAs in California SNFs generally increased faster than the inflation rate between FY 2001-02 and 2003-04. L&C determined this by applying the California Consumer Price Index to the nominal wage and salary data collected by OSHPD. Real pay rates (nominal, or actual, pay rates, adjusted to eliminate the effects of inflation) declined on two occasions during this period: between FY 2001-02 and 2002-03, average RN pay declined from \$24.86 to \$23.59 per hour, while average CNA pay declined from \$10.08 to \$10.05. Between FY 2001-02 and 2003-04, average hourly pay rose from \$24.86 to \$27.14 for RNs; from \$19.45 to \$21.30 for LVNs; and from \$10.08 to \$10.48 for CNAs. Facility expenditures on benefits also increased in real terms over this period, rising from \$.5 million in FY 2001-02 to \$.7 million in FY 2003-04.

Part 1: Staffing in Freestanding Skilled Nursing Facilities

I. Legislative Requirements

Welfare and Institutions (W&I) Code §14126.033 (AB 1629, Frommer, Chp. 875, Statutes of 2004) requires the California Department of Health Services (CDHS) to provide specific information about staffing levels in freestanding skilled nursing facilities (SNFs) to the Legislature by January 1, 2007 (Appendix A)¹. This information must cover the three years immediately prior to the passage of AB 1629 (state fiscal years [FYs] 2002-03, 2003-04, and 2004-05). As such, it is intended to serve as a basis for comparison with information to be included a follow-up report, due to the Legislature on January 1, 2008. The follow-up report must provide staffing data comparable to that presented in the 2007 report, but covering a period occurring two years after the implementation of the legislation. It must also compare the information from the 2007 report with that in the 2008 report.

AB 1629 requires two specific categories of information concerning the extent to which SNFs complied with the requirement of Health and Safety (H&S) Code §1276.5 that SNFs maintain minimum staffing levels of 3.2 nursing hours per patient-day (NHPPD):

1. The number and percent of freestanding SNFs that complied with minimum staffing requirements
2. The staffing levels prior to passage of the legislation

The entity within CDHS responsible for reporting this information to the Legislature is the Licensing and Certification Program (L&C).

II. Study Methods

Due primarily to the amount of time required to collect the staffing data for this study, L&C could not audit all of the state's 1,070 SNFs affected by AB 1629. Each facility audit required an average of three days—one day per FY. Audits took longer than expected because the necessary payroll and patient census data was not always available when the auditors arrived. A large proportion of facilities were not prepared for their staffing audits, despite receiving an All-Facilities Letter from L&C explaining the audit process (Appendix B), a phone call from the auditor specifying a two-week window in which the audit would occur, and a follow-up confirmation fax. Some facilities tried to collect the payroll and patient census information necessary for the audit, but overlooked certain categories of records, usually records documenting the use of registry nursing staff. Registry nurses are temporary staff, employed through a nursing registry agency. SNFs contract with registry agencies for temporary nursing help, as needed.

¹ W&I Code §requires L&C to report on freestanding SNF compliance with the 3.2 nursing hours per patient-day standard found in Health and Safety Code §1276.5(a). L&C is not required under §14126.033 to report on compliance with the nurse-to-patient ratio regulations developed in response to Chapter 684, Statutes of 201 (AB 1075).

All problems that slowed the audits were more pronounced for the earlier years of the study period. Table 2, for example, shows that the percentage of audited days on which data was available increased with each new FY.

Due to these delays, L&C could only audit a random sample of facilities rather than the entire population. The sampling design is described below.

AB 1629 increased the rates received by SNFs for care provided to Medi-Cal residents. This increase was funded in part by a quality assurance fee levied on providers. The net effect of these two changes on SNFs was an increase in overall Medi-Cal reimbursements. The legislative requirement for a baseline staffing report (which this document fulfills) was intended to create a reference point for a subsequent evaluation of the extent to which SNFs used these increased reimbursements to increase the number of licensed and certified nursing staff providing care to residents. The level of staffing is an indicator of quality of care.

To better characterize the effects of a rate increase on staffing, L&C stratified the study sample according to the categories used in the Medi-Cal rate development process. Those categories are the following:

- Los Angeles area counties, 59 and fewer beds
- Los Angeles area counties, 60 beds and above
- Bay Area counties, 59 and fewer beds
- Bay Area counties, 60 beds and above
- All Other counties, 59 and fewer beds
- All Other counties, 60 beds and above

The sampling strata created on the basis of the rate development categories shown above are described in Table 1.

Table 1: Number of Facilities in Each Sample Stratum

Stratum		Stratum Abbreviation	Total Facilities	Sample Facilities
Beds	Region			
59 & fewer	L. A.	LA_59	81	7
	Bay Area	BA_59	68	6
	All Other	AO_59	111	10
60 & above	L. A.	LA_60	267	23
	Bay Area	BA_60	145	13
	All Other	AO_60	398	34
All Facilities, Statewide			1070	93

Statewide, nine percent (n = 93) of all active, licensed SNFs were included in the audit sample. This sample size is sufficient to estimate population-level staffing compliance rates at the standard 95 percent significance level used in most inferential statistical

studies. The margin of error associated with this sample size is plus or minus five percent.

Within each facility, L&C audited a stratified random sample of 24 days for each of the three state FYs in the study period (2002-03, 2003-04, and 2004-05). The three strata used were holidays, non-holiday weekends, and non-holiday weekdays. This sample size is also sufficient to estimate annual facility-level staffing compliance rates at the standard 95 percent significance level, with a margin of error of plus or minus ten percent. This sample size is not sufficient to estimate compliance within each day-type stratum. Even if the sample size could theoretically permit such estimation, missing records would reduce L&C's ability to actually carry it out.

As noted above, all SNFs received an All-Facilities Letter (Appendix B) informing them about the upcoming audit. This letter went out well before audits began. Each audited facility was then informed by telephone and fax of the two-week window for the facility's audit. The actual dates of the audits were unannounced.

Neither the facilities nor the auditors knew ahead of time which dates would be audited. Audit dates were generated by the database into which the auditors keyed their audit results. These dates were not generated until just before data entry began.

To be as flexible as possible, L&C offered in its All-Facilities Letter to conduct audits at locations other than the SNFs, if payroll records were maintained off-site. Eleven facilities requested and received off-site audits. In every case, the alternative audit locations were either the corporate headquarters or the offices of a management services firm.

The auditors entered the number of hours worked by registered nurses (RNs), licensed vocational nurses (LVNs), certified nursing assistants (CNAs), and nursing assistants (NAs) as well as daily patient census data into a database on a laptop computer. The database calculated the NHPPD for each sample day. The auditors informed the facility administrators during an exit conference of the results for each sample day.

Because SNFs are required under H&S Code §1276.5 to maintain an NHPPD ratio of 3.2 or higher, L&C's auditors must issue a finding of non-compliance for each day on which the ratio was found to be below 3.2. This finding of non-compliance is known as a "deficiency." It requires the recipient facility to submit a formal plan of correction to the responsible L&C District Office within ten days.

III. Results

a. Data Availability

As shown in Table 2, staffing data were available to L&C auditors on 94 percent of the days sampled in all facilities statewide for FY 2004-05. The corresponding percentages for FYs 2003-04 and 2002-03 were 91 percent and 76 percent, respectively.

Maintenance and availability of staffing data by the SNFs is governed by the following statute and regulation:

1. California Labor Code §1174(d) requires SNFs to retain detailed payroll information for not less than two years. Labor Code §226(a) requires that summary payroll information be retained in-state for not less than three years,

but the records that must be maintained under this statute are not detailed enough for the L&C staffing audits. Moreover, L&C does not enforce the Labor Code, and cannot directly invoke either statute.

2. The California Code of Regulations (CCR) Title 22 §72533(b) requires that “Records of hours and dates worked by all employees during at least the most recent 12-month period shall be kept on file at the place of employment or at a central location within the State of California. Upon request, such records shall be made available, at a time and location specified by the Department.”

In almost every case, the reason for the lack of staffing data was a change of ownership. The current owner did not have access to the previous owner’s payroll records. L&C determined that it had no authority to require the current owner to acquire and make available payroll records from a previous owner. As a matter of policy, L&C issues only one deficiency per facility, covering all staffing deficiencies identified. Issuing the current owner a deficiency covering a previous owner’s staffing shortages is understandably problematic for the current owner.

In rare cases, a facility was simply unable to locate payroll records for one or more pay periods. Because none of these instances constituted a case of non-compliance with L&C-enforced statute or regulation (the missing records never fell within a time period covered by a statute or regulation), L&C took no action, other than reminding the facility administrators of their obligations under the law, and noting the lack of data in the audit database.

Table 2: Number and Percentage of Sample Days^a on Which Data Was Available

Stratum			2002-03		2003-04		2004-05	
Beds	Region	Number of Facilities in Sample	Number of Days With Data	% Days With Data	Number of Days With Data	% Days With Data	Number of Days With Data	% Days With Data
59 & fewer	L. A.	7	102	61%	141	84%	147	88%
	Bay Area	6	131	91%	144	100%	144	100%
	All Other	10	179	75%	221	92%	237	99%
60 & above	L. A.	23	375	68%	487	88%	520	94%
	Bay Area	13	266	85%	304	97%	310	99%
	All Other	34	649	80%	735	90%	743	91%
All Facilities, Statewide		93	1702	76%	2032	91%	2101	94%

^aTwenty-four days per year, per facility, were audited for each FY

b. *The number and percent of freestanding SNFs that complied with minimum staffing requirements.*

Table 3 shows that Statewide, across all facilities in all strata, only 22 sample facilities (24 percent) equaled or exceeded 3.2 NHPPD for all sample dates for which data was available in FY 2004-05. The corresponding figures for FYs 2003-04 and 2002-03 are 19 (20 percent) and 14 (15 percent), respectively. As shown in Table 2, data availability also improved over time in all strata. Table 3 shows that compliance rates also improved over time in most cases. Improvements in compliance are more easily discernable in Tables 4 and 5.

Table 3: Number and Percentage of Facilities in Which the NHPPD Ratio Was at or Above 3.2 for All Days Sampled^a

Stratum			2002-03		2003-04		2004-05	
Beds	Region	Number of Facilities in Sample	Number of Facilities ≥ 3.2	% of Facilities ≥ 3.2	Number of Facilities ≥ 3.2	% of Facilities ≥ 3.2	Number of Facilities ≥ 3.2	% of Facilities ≥ 3.2
59 & fewer	L. A.	7	2	29%	2	29%	4	57%
	Bay Area	6	0	0%	0	0%	1	17%
	All Other	10	1	10%	2	20%	3	30%
60 & above	L. A.	23	5	22%	6	26%	5	22%
	Bay Area	13	1	8%	1	8%	1	8%
	All Other	34	5	15%	8	24%	8	24%
All Facilities, Statewide		93	14	15%	19	20%	22	24%

^aTwenty-four days per year, per facility, were audited for each FY; percentages calculated only from days on which data was available

c. Staffing levels prior to the implementation of AB 1629.

Few SNFs complied fully with the 3.2 NHPPD requirement during the period prior to the implementation of AB 1629. When the data is viewed in other ways, however, higher compliance rates are discernable. Tables 4 and 5 show compliance rates by sample day rather than by facility. Because a single non-compliant day out of the 24 days audited annually prevented a facility from being classified as ‘compliant,’ the number of compliant facilities shown in Table 3 is quite low. However, most facilities were compliant on most of the days we audited. Table 4 shows mean daily NHPPD ratios by stratum and statewide.

Table 4: Mean daily NHPPD Values and Standard Deviations for Sample Days, by Fiscal Year and Stratum.

Fiscal Year	Sample Stratum		Mean	Standard Deviation or Standard Error of Mean	95% Confidence Level for Mean - Low	95% Confidence Level for Mean - High
	Beds	Region				
2002-2003	59 & Fewer	L.A	3.757	0.557	3.647	3.866
		Bay Area	3.171	0.459	3.092	3.251
		All Other	3.662	0.604	3.573	3.751
	60 & Above	L.A	3.307	0.374	3.270	3.345
		Bay Area	3.154	0.433	3.102	3.206
		All Other	3.240	0.680	3.188	3.293
Statewide		3.311	0.013	3.285	3.338	
2003-2004	59 & Fewer	L.A	3.673	0.481	3.593	3.753
		Bay Area	3.287	0.520	3.202	3.373
		All Other	3.552	0.568	3.477	3.628
	60 & Above	L.A	3.355	0.398	3.319	3.390
		Bay Area	3.241	0.345	3.203	3.280
		All Other	3.264	0.435	3.232	3.295
Statewide		3.344	0.010	3.325	3.363	
2004-2005	59 & Fewer	L.A	3.709	0.595	3.612	3.806
		Bay Area	3.386	0.581	3.291	3.482
		All Other	3.516	0.479	3.455	3.578
	60 & Above	L.A	3.385	0.420	3.350	3.421
		Bay Area	3.248	0.285	3.216	3.280
		All Other	3.293	0.363	3.267	3.320
Statewide		3.370	0.009	3.352	3.388	
All	All—Statewide		3.344	0.006	3.332	3.356

Table 4 shows that the mean daily NHPPD ratios in almost all sample strata were above 3.2. In only two cases were NHPPD ratios below 3.2: the two Bay Area strata in FY

2002-03. All statewide means exceeded 3.2 NHPPD. With only three exceptions, the lower bound on the 95 percent confidence interval is also above 3.2 NHPPD. We can infer with reasonable certainty that the population NHPPD mean is at or above 3.2. Our certainty increases as the distance between the lower bound of the confidence interval and 3.2 NHPPD increases. For FY 2002-03, our certainty is the lowest in the case of both Bay Area strata, and the 60-bed-and above “All Other” categories, in which the lower bound on the confidence interval (and, in the case of the two Bay Area strata, the estimate of the mean itself) falls below 3.2 NHPPD.

Table 5 is a direct counterpart to Table 3. It shows that, when measured by *day* rather by *facility* (as in Table 3), the overall compliance rate rises from 24 percent to 65 percent for FY 2004-05.

Table 5: Number and Percentage of Sample Days on Which the NHPPD Ratio Was At or Above 3.2^{a,b}

Stratum			2002-03		2003-04		2004-05	
Beds	Region	Number of Facilities in Sample	Number of Days ≥ 3.2	% of Days ≥ 3.2	Number of Days ≥ 3.2	% of Days ≥ 3.2	Number of Days ≥ 3.2	% of Days ≥ 3.2
59 & fewer	L. A.	7	88	52%	128	76%	126	75%
	Bay Area	6	65	45%	78	54%	77	53%
	All Other	10	154	64%	187	78%	190	79%
60 & above	L. A.	23	241	44%	339	61%	360	65%
	Bay Area	13	122	39%	163	52%	193	62%
	All Other	34	362	44%	441	54%	500	61%
All Facilities, Statewide		93	1032	46%	1336	60%	1446	65%

^aTwenty-four days per year, per facility, were audited for each FY

^bBased only on days for which staffing data was available

Part 2: Nursing Staff Salary, Wage, and Retention Rates

IV. Legislative Requirements

AB 1629 requires the California Department of Health Services (CDHS) to provide specific information about Nursing Staff Salary, Wage, and Retention Rates to the Legislature by January 1, 2007 (Appendix A). This information is to cover the three years immediately prior to the passage of AB 1629 (state FYs 2002-03, 2003-04, and 2004-05). AB 1629 requires two specific categories of information:

1. The staffing retention rates prior to the implementation of this article.
2. The average wage and benefits for employees prior to the implementation of this article.

V. Study Methods

All the data needed for this portion of L&C's report is collected, maintained, and made available by the Office of Statewide Health Planning (OSHPD). L&C obtained the necessary OSHPD data sets, and prepared the summaries presented below. The OSHPD data and the information below represent all SNFs—not a random sample, as was the case in Part I of this report.

VI. Results

Tables 6 and 7 report nursing staff payroll expenditures and pay rates in California SNFs between FYs 2001-02 and 2003-04². Table 6 presents pay rates in nominal (unadjusted for inflation) dollars, while Table 7 adjusts the values from Table 6 for inflation using the California Consumer Price Index (CCPI). As these tables show, the consistent year-to-year increases in nursing pay and benefits were interrupted on only two occasions. Registered nurses experienced a drop in both real and nominal earnings between FYs 2001-02 and 2002-03. This decline is reflected in a decline in the average real payroll expenditures for registered nurses by SNFs over this period (Table 7).

The other pay increase reversal occurred between fiscal years 2001-02 and 2002-03, when the nominal \$0.28 increase in average annual nursing assistant earnings dropped to a \$0.03 decrease after being adjusted for inflation.

Of the three categories of nursing staff shown in Tables 6 and 7, only Licensed Vocational Nurses (LVNs) benefited from uninterrupted increases in both average payroll expenditures by SNFs, and wage and salary income (both nominal and real).

The magnitude of almost all of the year-to-year changes reported in Tables 6 and 7 is small—well below ten percent. The most significant exception to this was average benefit expenditures by SNFs between FYs 2001-02 and 2002-03. A 28 percent real-dollar increase occurred over that period.

² This analysis is based on data collected and made available by the Office of Statewide Health Planning (OSHPD). This data is self-reported by the reporting facilities.

The other non-trivial year-to-year change shown in Tables 6 and 7 was a 15 percent increase in the average hourly real-dollar earnings of registered nurses between FYs 2002-03 and 2003-04.

Table 6: Average Occupancy Rates, and Salary, Wage, and Benefit Expenditures in California Skilled Nursing Facilities (Unadjusted for Inflation).

State Fiscal Year	Avg. Salary & Wage Expenditure by Facility (in millions)	Avg. Benefit Expenditure by Facility (in millions)	Avg. Salary & Wage Expenditures by SNFs (in millions)			Average Hourly Earnings ^b		
			RN ^c	LVN	NA ^d	RN	LVN	NA
2001-02	\$2.20	\$.50	\$.25	\$.37	\$.72	\$24.86	\$19.45	\$10.08
2002-03	\$2.34	\$.68	\$.25	\$.40	\$.77	\$24.32	\$20.42	\$10.36
2003-04 ^a	\$2.34	\$.71	\$.25	\$.42	\$.77	\$27.55	\$21.62	\$10.64

^aAudited data for FYs beyond 2003-04 is not yet available from OSHPD.

^bCalculated by dividing the average annual salary and wage expenditures by SNFs, as reported in this table, by the annual average hours worked.

^cRegistered Nurse

^dNurse's Assistant

Table 7: Average Salary, Wage, and Benefit Expenditures in California Skilled Nursing Facilities (Real Dollars, Adjusted for Inflation Using the California Consumer Price Index).

State Fiscal Year	CCPI-Based Inflation Rate	Avg. Salary & Wage Expenditure by Facility (in millions)	Avg. Benefit Expenditure by Facility (in millions)	Avg. Salary & Wage Expenditures by SNFs (in millions)			Average Hourly Earnings ^b		
				RN	LVN	NA	RN	LVN	NA
2001-02 ^c	--	\$2.20	\$.50	\$.25	\$.37	\$.72	\$24.86	\$19.45	\$10.08
2002-03	3.00%	\$2.27	\$.64	\$.24	\$.39	\$.75	\$23.59	\$19.81	\$10.05
2003-04 ^a	1.50%	\$2.31	\$.70	\$.25	\$.41	\$.76	\$27.14	\$21.30	\$10.48

^aAudited data for FYs beyond 2003-04 is not yet available from OSHPD.

^bCalculated by dividing the average annual salary and wage expenditures by SNFs, as reported in this table, by the annual average hours worked.

^cFY 2001-02 serves as the base year in this table. The values in the FY 2001-02 row are taken directly from Table 6. The values reported for subsequent years are the values from Table 6, reduced by the inflation rate shown in the column labeled, "CCPI-Based Inflation Rate."

Nursing Staff Retention Rates

The OSHPD staffing retention rate data consists of two fields: the number of staff who were on the payroll at the beginning of the OSHPD reporting period, and the number who were on the payroll at both the beginning and the end of the reporting period. In order to present those data in the form of standardized rates, L&C reports it here as the percentage of staff on the payroll at the beginning of the reporting period who were still on the payroll at the end of the payroll period.

The results are shown in Figures 1 through 8, which are detailed profiles of SNF nursing staff retention rates between 2002 and 2005. Figures 1 through 4 present the rates for RNs and LVNs, while Figures 5 through 8 present CNA rates. These graphs, known as histograms, show the numbers of facilities whose retention rates fall into a set of uniform categories. The categories—10 percent segments of the full retention percentage range—are arrayed along the horizontal axes, while the facility counts are shown on the vertical axes. Each category on the horizontal axes includes all percentages equal to or less than the category label, but greater than the category label to the left. The leftmost category contains all percentages equal to or less than zero, while the rightmost category contains all percentages equal to or less than 100, but greater than 90. Figure 1, for example, shows retention rates for 1,209 SNFs (the number reporting 2002 RN and LVN employment figures to OSHPD) are distributed over 11 percentage retention rate categories. The first category, retention rates equal to or less than zero, contains one of the 1,209 facilities. Since there are no sub-zero retention rates, this category contains only zero percent retention rates. The next category contains two facilities with retention rates equal to or less than ten percent, but greater than zero percent.

The value of these histograms becomes evident if the tops of each of the bars can be thought of as connected by a uniform curve. The larger bars in the interior region form a bulge in that curve, while the left and right tails taper off more or less smoothly toward facility counts of zero. Where the bulge occurs relative to the horizontal axis tells us much about overall retention rates in the state's SNFs. A bulge toward the right end of the horizontal axis indicates that most facilities have high retention rates, while a bulge to the left of the horizontal axis indicates the opposite. A bulge that moves to the left from year to year indicates declining retention rates, while a rightward movement indicates increasing rates.

Figures 1 through 8 indicate that most facilities report retaining well over half of their nursing staff for the 2002, 2003, 2004, and 2005 reporting periods.³ In fact, retention rates for most facilities were in the 60 to 70 percent range during each of these periods. On three occasions (see Figures 2, 4, and 6), the majority of facilities actually reported retaining between 70 and 80 percent of their nursing staff.

Neither set of histograms (Figures 1 through 4, nor Figures 5 through 8) show an unbroken trend in retention rates. For RNs and LVNs, the bulge in the retention rate

³ Although the OSHPD reporting period is a single calendar year, the reporting periods of individual facilities vary. The periods covered by the retention data used in this analysis, therefore, does not cover a full year in the case of every facility. The data used herein is self-reported by the facilities, and audited by OSHPD.

curve moves to the right between 2002 and 2003, but moves back toward 2002 levels in 2004. In 2005, a rightward movement resumed. This pattern indicates that retention rates began to improve, reversed, and then began again to improve over the 2002-2005 period.

CNA retention rates also improved between 2002 and 2003, and then reversed direction between 2003 and 2004 (as indicated by a rightward, followed by a leftward movement of the histogram bulge). Unlike RNs and LVNs, however, retention rates continued to decline between 2004 and 2005.

Figure 1: Retention Percentage Frequencies, 2002, RNs and LVNs

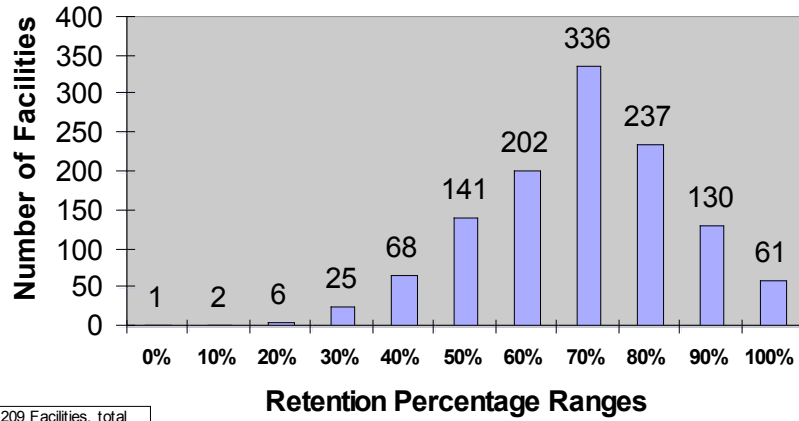


Figure 2: Retention Percentage Frequencies, 2003, RNs & LVNs

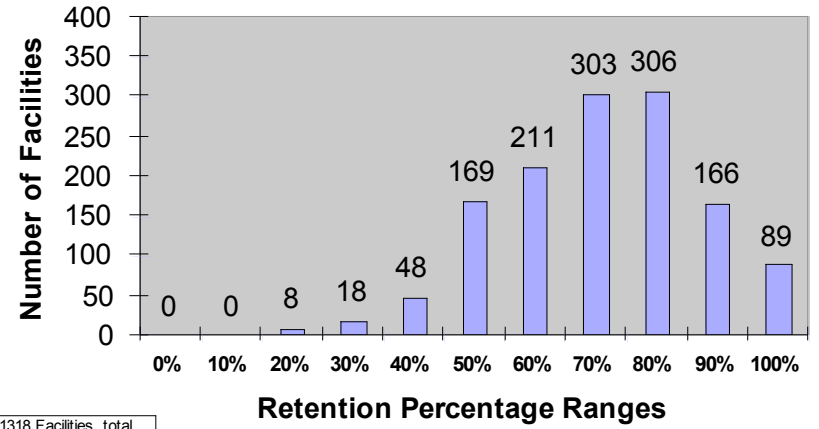


Figure 3: Retention Percentage Frequencies, 2004, RNs and LVNs

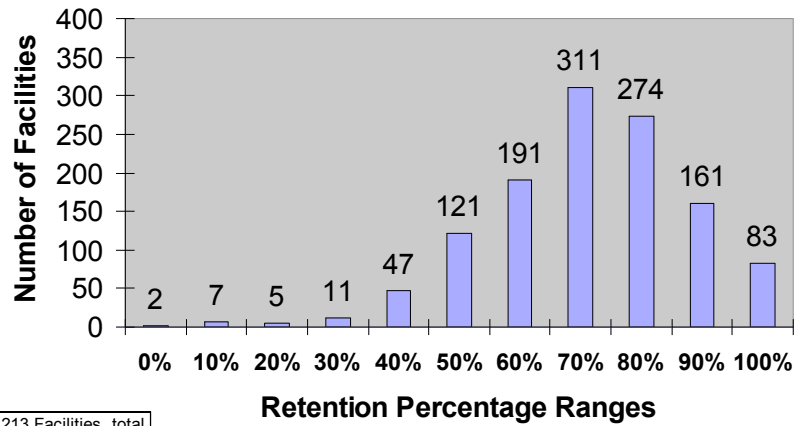


Figure 4: Retention Percentage Frequencies, 2005, RNs & LVNs

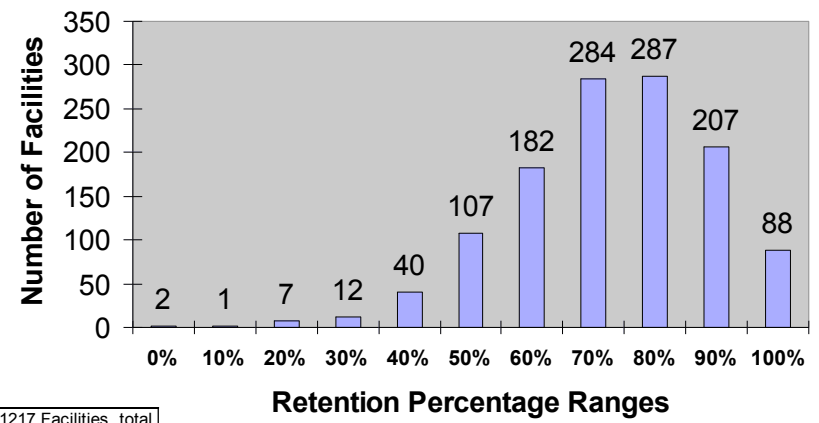
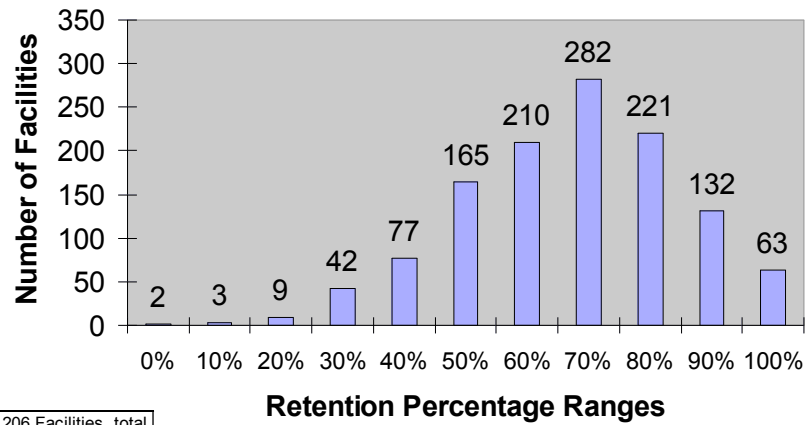
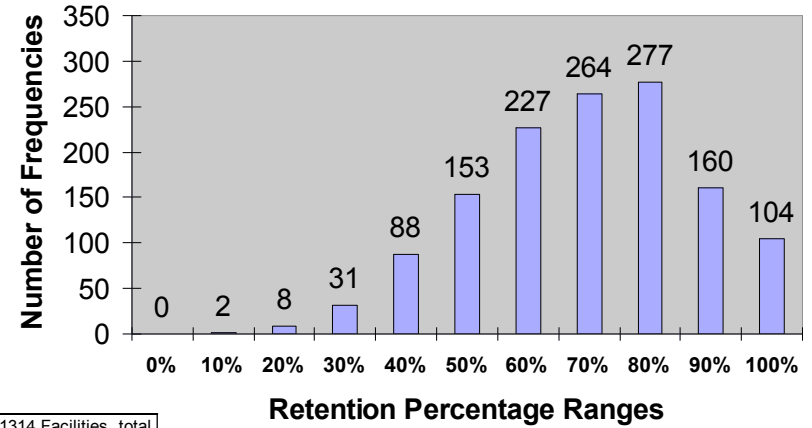


Figure 5: Retention Percentage Frequencies, 2002, CNAs



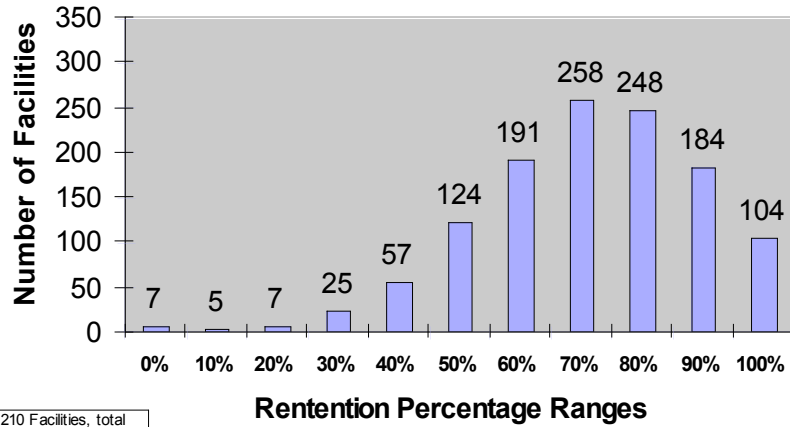
1206 Facilities, total

Figure 6: Retention Percentage Frequencies, 2003, CNAs



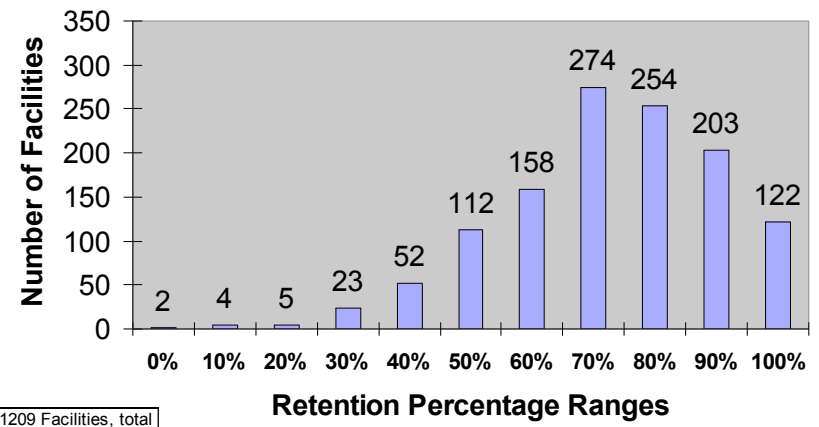
1314 Facilities, total

Figure 7: Retention Percentage Frequencies, 2004, CNAs



1210 Facilities, total

Figure 8: Retention Percentage Frequencies, 2005, CNAs



1209 Facilities, total

Part 3: Citations Issued and Findings of Immediate Jeopardy, Substandard Quality of Care, and Actual Harm

I. Legislative Requirements

AB 1629 requires CDHS to provide specific information about the results of the surveys and complaint investigations conducted by L&C. The Legislature requires two specific categories of information about these results:

1. The numbers and percentage of freestanding skilled nursing facilities with findings of immediate jeopardy, substandard quality of care, or actual harm, as determined by the certification survey of each freestanding skilled nursing facility conducted prior to the implementation of this article.
2. The number of freestanding skilled nursing facilities that received state citations and the number and class of citations issued during calendar year 2004.

II. Study Methods

The results reported in this section are the result of analyses on data obtained from the state Electronic Licensing Management System (ELMS), and the federal Certification and Survey Provider Enforcement Reporting system (CASPER). The state citation results presented below are based on data from ELMS, while the federal survey results are based on data from CASPER.

III. Results

Table 8 shows that between calendar years 2001 and 2004, the total number of citations issued to SNFs decreased from 813 to 471, a 42 percent decline.

Table 8: Citations Issued to SNFs between Calendar Years 2001 and 2004

Calendar Year	Complaints Filed^a	Citations Issued for Title 22 & H& S Code Deficiencies	Percent Decline from 2001	Number of Facilities Issued Citations
2001	6,980	813	--	398
2002	8,170	744	8%	430
2003	7,851	718	12%	351
2004	5,742	471	42%	270

^aDoes not include facility-reported incidents. These are usually minor incident reports such as a temporary loss of air conditioning, or leak in the roof. The number of self-reported incidents rose from 3,321 to 9,770 over this period.

This decline in citations in the face of a relatively stable complaint load is primarily the result of a shortage of L&C surveyors in the field. This shortage was largely rectified in the Budget Act of 2006, which granted L&C 141 new nurse surveyor positions and increased nurse surveyor salaries. These Budget Act provisions were in response to both the shortage of budgeted nurse surveyor positions in L&C, and also L&C's inability to recruit, hire, and retain nurse surveyors at state salaries. The percentage of vacancies statewide rose from five percent in 2001 to ten percent in 2003, dropping to just under eight percent in 2004.

Tables 9 and 10 break down citations issued between 2001 and 2004 by citation type (Table 9) and numbers of recipient facilities (Table 10) (for definitions of the citation types issued by L&C, please see Appendix D). The data shown in Tables 8 and 9 are displayed graphically in Appendix C.

Table 9: Citations Issuance by Type, Calendar Years 2001-04

Year	Citation Type	Total
2004	AA	11
	A	73
	B	384
	WMF/WMO ^a	3
2003	AA	16
	A	109
	B	590
	WMF/WMO ^a	3
2002	AA	9
	A	144
	B	590
	WMF/WMO ^a	1
2001	AA	23
	A	135
	B	652
	WMF/WMO ^a	1

^aWillful Material Falsification/Willful Material Omission

Although most facilities receiving citations of a given type received only one, some received multiple citations. The number of citations issued to individual SNFs is shown, by citation type, in Table 10.

Table 10: Citations Received—Facility Summary, Calendar Years 2001-04

(A)	(B)	(C)	(D)	(E)
Year	Citation Type	No. of Recipient Facilities ^a	Percentage of Recipient Facilities (Col. C) Receiving No. of Citations in Col. (E)	Total Citations of “Citation Type” (Col. B) Issued to The Recipients in Col (D)
2004	AA	10	90%	1
			10%	2
	A	64	87.5%	1
			10.9%	2
			1.6%	3
	B	233	64.4%	1
			19.3%	2
			9.4%	3
			3.9%	4
			1.3%	5
0.4%			6	
WMF/WMO ^b	3	1.3%	7	
		100%	1	
2003	AA	15	93.3%	1
			6.7%	2
	A	90	84.4%	1
			11.1%	2
			3.3%	3
			1.1%	4
	B	297	64.6%	1
			17.5%	2
			7.7%	3
			4%	4
			2.4%	5
			1%	6
			0.3%	7
			0.7%	8
			0.7%	11
0.3%			14	
WMF/WMO ^b	3	0.3%	24	
		100%	41	
2002	AA	9	100%	1

(A)	(B)	(C)	(D)	(E)
Year	Citation Type	No. of Recipient Facilities ^a	Percentage of Recipient Facilities (Col. C) Receiving No. of Citations in Col. (E)	Total Citations of "Citation Type" (Col. B) Issued to The Recipients in Col (D)
	A	117	84.6%	1
			10.3%	2
			2.6%	3
			2.6%	4
	B	369	67.5%	1
			18.7%	2
			6.0%	3
			4.3%	4
			2.7%	5
			0.3%	6
			0.3%	7
			0.3%	10
	WMF/WMO ^b	1	100%	1
	2001	AA	20	85%
15%				2
A		105	78.1%	1
			16.2%	2
			4.8%	3
			1.0%	4
B		349	64.5%	1
			20.9%	2
			10.3%	3
			2.0%	4
			1.1%	5
			0.3%	6
			0.3%	21
			0.3%	30
0.3%	68			
WMF/WMO ^b	1	100%	1	

^aThe facility counts in this column will not total to the facility counts in Table 8 because a single facility can receive more than one citation type in a year. If a facility receives 2 A and 4 B citations, for example, that facility will be counted in both the A and B citation rows. Each facility is counted only once in Table 8, regardless of the total number of citations it received.

^bWillful Material Falsification/Willful Material Omission

The issuance of multiple citations to individual SNFs in 2004 can be summarized as follows:

- 25 percent of all licensed SNFs received more than two citations.
- 39 SNFs received some combination of type AA, A, B, and WMF/WMO citations. This represents 14.4 percent of the 270⁴ SNFs that received one or more citations in that year.
 - One SNF received a type A and a type AA citation,
 - One SNF received three type A and seven type B citations
 - One SNF received two type AA and three type B citations.
 - The remaining 36 SNFs received some combination of type A, AA and B citations.

L&C consistently issues more Type B citations than any other citation type. The citation type that L&C issues least often is the Willful and Material Falsification/Omission (WMF/WMO).

Findings of Immediate Jeopardy, Actual Harm and Substandard Quality of Care

When conditions warrant, L&C issues findings of immediate jeopardy (IJ), actual harm (AH), and substandard quality of care (SQOC) to SNFs during its regular certification and recertification surveys. These finding types are defined in Appendix E. The federal Centers for Medicare and Medicaid Services (CMS) requires that each SNF that wishes to participate in, and receive funds from, Medicare and/or Medicaid (in California, Medi-Cal) must be certified by the state survey agency, L&C, as compliant with the federal conditions of participation (CoP) in the Code of Federal Regulations, Title 42, Part 483.1 et seq. CMS further requires that certified SNFs undergo a recertification survey every 9 to 15.9 months. In other words, a recertification survey must occur no sooner than 9 months after the previous survey, but no later than 15.9 months following that previous survey. A facility's survey cycle is set in motion when L&C initially certifies to CMS that the facility qualifies to participate in Medicare and/or Medi-Cal by meeting the CoP.

Table 11 shows the number of IJ, AH, and SQOC findings issued during FYs 2003-04, 2004-05, and 2005-06. Data from FYs prior to 2003-04 are not available because the federal recertification survey data system which houses these survey results only retains the current survey cycle plus the three previous cycles. In addition, data from FY 2003-04 are somewhat under-reported by the system (see the footnote to Table 11). Overall, findings of AH were issued far more often than the other finding types. Table

⁴ Simply adding the type A, AA, B, and WMO/WMF citation recipients yields a total of 310 recipient facilities. Since many of these received multiple citations, however, the same facility is often included in more than one citation category, resulting in double-counting. The total count of facilities receiving one or more citation for 2004 is 270.

11 also shows that, although the number of facilities surveyed dropped over this period, the number of IJ, AH, and SQOC findings increased substantially. Fewer facilities were surveyed over this period due to the declining number of surveyors in the field, as described above. This caused the length of the interval between surveys to increase, and the number of surveys completed in each fiscal year to decline. The surveyors who remained on the job, however, became increasingly effective at identifying and reporting non-compliant conditions.

Table 11: Findings of Immediate Jeopardy (IJ), Actual Harm (AH), and Substandard Quality of Care (SQOC), Issued Between FYs 2003-04 and 2005-06

FY	Number of SNFs Surveyed	Number of IJ Findings^b	Number of AH Findings^b	Number of SQOC Findings^b	IJ, AH, SQOC Issuance Total^b
03/04 ^a	1413	6	104	13	123
04/05	1323	34	155	35	224
05/06	1219	50	290	40	380
Totals	3955	90	549	88	727

^aThe federal survey reporting application from which these data were derived (the Certification and Survey Provider Enforcement Reporting system, or CASPER) went into production during the FY 2003-04. The data from that period is known to be somewhat incomplete. Actual 2003-04 IJ, AH, and SQOC findings are likely to be somewhat higher than the totals reported herein.

^bA single facility can receive one or more IJ, AH, and/or SQOC finding.

Appendix A:

Applicable Excerpts from Welfare and Institutions Code Section 14126.033 (Assembly Bill 1629, Frommer, Chapter 875, Statutes of 2004)

(c) (3) Not later than January 1, 2007, to the extent information is available for the three years immediately preceding the implementation of this article, the department shall provide baseline information in a report to the Legislature on all of the following:

(A) The number and percent of freestanding skilled nursing facilities that complied with minimum staffing requirements.

(B) The staffing levels prior to the implementation of this article.

(C) The staffing retention rates prior to the implementation of this article.

(D) The numbers and percentage of freestanding skilled nursing facilities with findings of immediate jeopardy, substandard quality of care, or actual harm, as determined by the certification survey of each freestanding skilled nursing facility conducted prior to the implementation of this article.

(E) The number of freestanding skilled nursing facilities that received state citations and the number and class of citations issued during calendar year 2004.

(F) The average wage and benefits for employees prior to the implementation of this article.

(4) Not later than January 1, 2008, the department shall provide a report to the Legislature that does both of the following:

(A) Compares the information required in paragraph (2) to that same information two years after the implementation of this article.

(B) Reports on the extent to which residents who had expressed a preference to return to the community, as provided in Section 1418.81 of the Health and Safety Code, were able to return to the community.

(5) The department may contract for the reports required under this subdivision.

(d) This section shall become inoperative on July 31, 2008, and as of January 1, 2009, is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

Appendix B:

All-Facilities Letter 05-39

March 6, 2006

AFL 05-39

To: SKILLED NURSING FACILITIES

Subject: DATA COLLECTION PROCEDURE TO EVALUATE COMPLIANCE WITH
HSC 1276.5 AS MANDATED BY AB 1629

In compliance with Welfare and Institutions Code Section 14126.033 (Assembly Bill 1629, Frommer, Chapter 875, Statutes of 2004), the California Department of Health Services (CDHS) Licensing and Certification program (L&C) will soon begin sending staff into the field to collect data from all freestanding skilled nursing facilities (SNFs) in order to calculate compliance with the 3.2 nursing hours per patient day staffing ratio mandated by Section 1276.5 of the California Health and Safety Code. The monitoring visits will begin soon and continue through 2006, and they will be unannounced. CDHS L&C will, however, notify providers of the two to three week window when they can expect a visit. We expect the monitoring visits to last approximately one day, depending on the size of the facility.

AB 1629 specifically exempts from these visits the following nursing facilities:

- Those that are part of a continuing care retirement community
- Distinct parts (D/P SNFs) of a licensed general acute care hospital
- State of California or another public entity-owned

Exempt facilities will not be visited. Also, facilities whose population is comprised entirely of residents receiving Special Treatment Program services will not be visited because the staffing requirements differ. However, skilled nursing facilities in which only some residents receive Special Treatment Program services will be visited.

AB 1629 requires CDHS L&C to report to the Legislature the number and percent of SNFs that complied with the minimum staffing requirement during each patient day for the three years immediately preceding the implementation of the new law. Therefore, during the visits, facilities will be required to make available to CDHS L&C staff payroll records documenting nurse staffing hours as well as patient census records for the period beginning July 1, 2002 through June 30, 2005. If that information is retained in a location other than your facility, please notify CDHS L&C where the payroll data may be obtained within 30 days of receipt of this letter. L&C staff will review payroll data at your corporate headquarters or at the facility, whichever location is most convenient for you. The bulk of this information should be readily available, as all employers are required to

Licensing and Certification Program, MS 3000, P.O. Box 997413, Sacramento, CA
(916) 552-9370

Internet Address: www.dhs.c.gov

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March 6, 2006

retain payroll information for a minimum of three years either at the place of employment or at a central location within the State of California in accord with section 226(a) of the California Labor Code.

Staff will be equipped with a laptop computer and a portable printer. They will need to have access to either a live telephone line or a digital subscriber line (DSL) while in the facility or at your corporate headquarters in order to access the database, which is housed on the CDHS network. The number they will dial is a toll free number, so there will not be any charge to the facility.

If CDHS L&C staff finds that a facility was not in compliance with the mandated 3.2 nursing hours per patient day for any of the days calculated, staff will issue the facility a deficiency at the end of the visit and the facility will be responsible for submitting a plan of correction to its local district office.

If you have any questions about these monitoring visits, you may contact Gina Henning of my staff at (916) 552-9370. We appreciate your cooperation with this process.

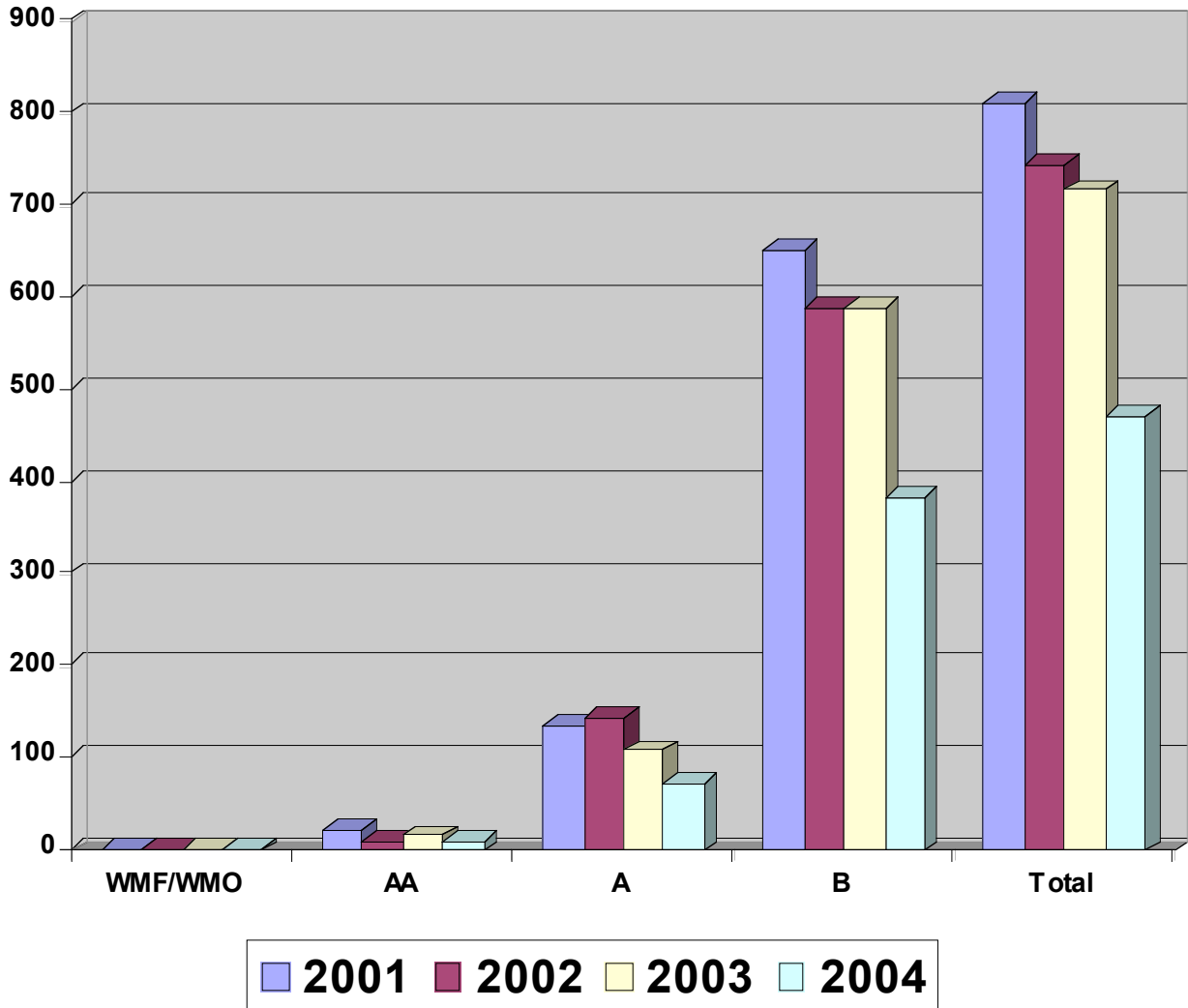
Sincerely,

Original Signed by Brenda Klutz

Brenda G. Klutz
Deputy Director

Appendix C: Citations Issuance Trends

Figure C-1: Citations Issued Annually



Appendix D: Statutory Definitions of Citation Categories

Health Safety Code, §1424 defines the citation categories used by CDHS Licensing and Certification as follows:

(c) Class "AA" violations are violations that meet the criteria for a class "A" violation and that the state department determines to have been a direct proximate cause of death of a patient or resident of a long-term health care facility. Except as provided in Section 1424.5, a class "AA" citation is subject to a civil penalty in the amount of not less than five thousand dollars (\$5,000) and not exceeding twenty-five thousand dollars (\$25,000) for each citation. In any action to enforce a citation issued under this subdivision, the state department shall prove all of the following:

- (1) The violation was a direct proximate cause of death of a patient or resident.
- (2) The death resulted from an occurrence of a nature that the regulation was designed to prevent.
- (3) The patient or resident suffering the death was among the class of persons for whose protection the regulation was adopted.

If the state department meets this burden of proof, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.

Except as provided in Section 1424.5, for each class "AA" citation within a 12-month period that has become final, the state department shall consider the suspension or revocation of the facility's license in accordance with Section 1294. For a third or subsequent class "AA" citation in a facility within that 12-month period that has been sustained following a citation review conference, the state department shall commence action to suspend or revoke the facility's license in accordance with Section 1294.

(d) Class "A" violations are violations which the state department determines present either (1) imminent danger that death or serious harm to the patients or residents of the long-term health care facility would result therefrom, or (2) substantial probability that death or serious physical harm to patients or residents of the long-term health care facility would result therefrom. A physical condition or one or more practices, means, methods, or operations in use in a long-term health care facility may constitute a class "A" violation. The condition or practice constituting a class "A" violation shall be abated or eliminated immediately, unless a fixed period of time, as determined by the state department, is required for correction. Except as provided in Section 1424.5, a class "A" citation is subject to a civil penalty in an amount not less than one thousand dollars (\$1,000) and not exceeding ten thousand dollars (\$10,000) for each and every citation.

If the state department establishes that a violation occurred, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.

(e) Class "B" violations are violations that the state department determines have a direct or immediate relationship to the health, safety, or security of long-term health care

facility patients or residents, other than class "AA" or "A" violations. Unless otherwise determined by the state department to be a class "A" violation pursuant to this chapter and rules and regulations adopted pursuant thereto, any violation of a patient's rights as set forth in Sections 72527 and 73523 of Title 22 of the California Code of Regulations, that is determined by the state department to cause or under circumstances likely to cause significant humiliation, indignity, anxiety, or other emotional trauma to a patient is a class "B" violation. A class "B" citation is subject to a civil penalty in an amount not less than one hundred dollars (\$100) and not exceeding one thousand dollars (\$1,000) for each and every citation. A class "B" citation shall specify the time within which the violation is required to be corrected. If the state department establishes that a violation occurred, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.

In the event of any citation under this paragraph, if the state department establishes that a violation occurred, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.

(f) (1) Any willful material falsification or willful material omission in the health record of a patient of a long-term health care facility is a violation.

(2) "Willful material falsification," as used in this section, means any entry in the patient health care record pertaining to the administration of medication, or treatments ordered for the patient, or pertaining to services for the prevention or treatment of decubitus ulcers or contractures, or pertaining to tests and measurements of vital signs, or notations of input and output of fluids, that was made with the knowledge that the records falsely reflect the condition of the resident or the care or services provided.

(3) "Willful material omission," as used in this section, means the willful failure to record any untoward event that has affected the health, safety, or security of the specific patient, and that was omitted with the knowledge that the records falsely reflect the condition of the resident or the care or services provided.

Appendix E: Definitions of Immediate Jeopardy, Actual Harm, and Substandard Quality of Care

I. Regulatory Definitions of Immediate Jeopardy , Substandard Quality of Care, and other terms related to the federal survey process

[Code of Federal Regulations]

[Title 42, Volume 3]

[Revised as of October 1, 2002]

From the U.S. Government Printing Office via GPO Access

[CITE: 42CFR488.301]

[Page 899-900]

TITLE 42--PUBLIC HEALTH

CHAPTER IV--CENTERS FOR MEDICARE & MEDICAID SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES--(Continued)

PART 488--SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES--Table of Contents

Subpart E--Survey and Certification of Long-Term Care Facilities

Sec. 488.301 Definitions.

As used in this subpart—

[The following consists of excerpts rather than the full text of 42CFR488.301]

Facility means a SNF or NF, or a distinct part SNF or NF, in accordance with Sec. 483.5 of this chapter.

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Immediate jeopardy means a situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

Skilled nursing facility (SNF) means a Medicare nursing facility.

Standard survey means a periodic, resident-centered inspection which gathers information about the quality of service furnished in a facility to determine compliance with the requirements for participation.

Substandard quality of care means one or more deficiencies related to participation requirements under Sec. 483.13, Resident behavior and facility practices, Sec. 483.15, Quality of life, or Sec. 483.25, Quality of care of this chapter, which constitute either immediate jeopardy to resident health or safety; a pattern of or widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm, but less than immediate jeopardy, with no actual harm.

Substantial compliance means a level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

II. Definition of Actual Harm in the Centers for Medicare and Medicaid Services' State Operations Manual, and further in references appearing in 42CFR.

The Centers for Medicare and Medicaid Services' State Operations Manual defines actual harm (that is not immediate jeopardy) as a "Deficient practice that results in a negative outcome that has compromised the resident's ability to maintain and/or reach his/her highest practicable physical, mental, and psychosocial well-being." This definition appears in the Scope and Severity Grid, which surveyors use to determine the appropriate finding to reach in response to each violations encountered.

In addition to the references to "harm" in the definitions of immediate jeopardy, substandard quality of care, abuse, and other terms in 42 CFR488.301, 42CFR488.325 uses "harm" in describing the required disclosure of deficiency information to the public.