

## **Report to the Legislature**

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

January 1, 2009

### **Executive Summary**

Welfare and Institutions (W&I) Code §14126.033 (AB 1629, Frommer, Chapter 875, Statutes of 2004) requires the California Department of Public Health's (CDPH's) Licensing and Certification Program (L&C) to provide two annual reports to the Legislature assessing various indicators of the quality of patient care in freestanding skilled nursing facilities (SNFs). The first was due on January 1, 2007, and the second on January 1, 2009. The first report was to cover the three years immediately prior to the passage of AB 1629 (state fiscal years (FYs) 2002-03, 2003-04, and 2004-05). The second report is to perform the same assessment for the period beginning two years after the implementation of the legislation (FYs 2005-06 and 2006-07).

For the first report, 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.

For the second report, the statute requires a comparison of the information required in areas (A) through (F), mentioned above, to that same information two years after the implementation of the statute plus the following new reporting requirement :

(G) 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.

### **The 2009 Legislative Report**

The purpose of the 2009 report is to assess the changes that occurred in areas (A) through (F) above covering the period after the implementation of the statute. This

report also includes a new section reporting on the number of SNF patients who returned to the community after having expressed a preference to do so.

It should be emphasized that the “quality of care” indicators mentioned in this report—e.g., staffing, wages/benefits, numbers of state citations and federal/state deficiencies, etc.—are not the exclusive list of quality of care indicators nor are they the Department’s chosen list—they are factors specified in statute.

Nursing home quality is “multidimensional, encompassing clinical, functional, psychosocial and other aspects of resident health and well being.”<sup>[i]</sup> Commonly used quality dimensions include quality of care, quality of life, nurse staffing, and compliance with state and federal licensure and certification requirements. This report, per state statute, only focuses on two of these dimensions-- nurse staffing, and compliance with state and federal licensure and certification requirements. Quality of care is focused largely on residents’ health and safety and encompasses the quality of both care processes and care outcomes. Quality of life encompasses factors such as autonomy, dignity, individuality, comfort, meaningful activity and relationships, a sense of security, and spiritual well-being.<sup>[ii]</sup> Nurse staffing quality is comprised of several factors including staffing levels, staff retention and turnover, and staff wages and benefits. Quality relating to compliance with licensing and certification is assessed based on the scope and severity of facilities’ deficiencies and citations.

Preliminary L&C findings are as follows:

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

For the staffing sections of the report, L&C audited a random sample of open, active, freestanding SNFs for compliance with the 3.2 NHPPD requirement. In each of the state fiscal years under review, L&C audited a sample of SNFs on 24 randomly selected days. In every fiscal year, most SNFs were compliant on most of the 24 audited days. The mean statewide NHPPD over all audited days rose in each successive year, as follows:

- 3.31 in FY 2002-03,
- 3.34 in FY 2003-04,
- 3.37 in FY 2004-05,
- 3.41 in FY 2005-06,
- 3.46 in FY 2006-07.

<sup>[i]</sup> “Validation of Long-Term and Post-Acute Care Quality Indicators.” June 2003. Prepared by Abt Associates Inc. Prepared for Yael Harris, Centers for Medicare & Medicaid Services.

<sup>[ii]</sup> “Nursing Home Quality: Twenty Years After the Omnibus Budget Reconciliation Act of 1987.” JM Wiener et al. Prepared for the Henry J. Kaiser Family Foundation. December 2007.

Although the estimated average for all California SNFs for all five of these periods was above 3.2 NHPPD, relatively few SNFs were compliant on all audited days. However, the percentage of fully-compliant facilities has also been gradually increasing over time as follows:

- 15 percent of SNFs in FY 2002-03,
- 20 percent of SNFs in FY 2003-04,
- 24 percent of SNFs in FY 2004-05,
- 26 percent of SNFs in FY 2005-06,
- 31 percent of SNFs in FY 2006-07.

***(C) The staffing retention rates prior to and after the implementation of this statute.***

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 2006. Data from all SNFS was used in this analysis—it is not based on the sample used in Sections (A) and (B) above.

This report uses a series of graphs known as histograms to display how retention rates changed over the 2002-2006 period. These histograms break the full 100-percentage-point retention range into ten-percentage-point categories, and then show how many facilities fall into each category (See Figures 3a-3e and 4a-4e, pages 24-25). These graphs demonstrate that, over time, the number of facilities falling into the higher retention rate ranges for both nurses (Registered Nurses and Licensed Vocational Nurses) and assistants (Certified Nursing Assistants) increases. The following table summarizes these results. It shows how the percentage of facilities falling into the 50 percent and higher retention rate ranges has increased over time.

<b>Calendar Year</b>	<b>RN/LVN Retention of 50% or higher (Percentage of Facilities)</b>	<b>CNA Retention of 50% or higher (Percentage of Facilities)</b>
<b>2002</b>	79.9%	75.3%
<b>2003</b>	81.6%	78.5%
<b>2004</b>	84.1%	81.4%
<b>2005</b>	86.1%	83.6%
<b>2006</b>	90.8%	89.5%

**(D) The numbers and percentage of freestanding SNFs with findings of immediate jeopardy, substandard quality of care, or actual harm prior to and after the implementation of this statute.**

Available data from all SNFs subject to the Federal certification survey process were used in this analysis—it is not based on the sample used in Sections (A) and (B). Findings of immediate jeopardy, actual harm, and substandard quality of care are among the most severe violations that a facility can be issued. The following table shows that during calendar years (CYs) 2004 through 2007, approximately 15 percent of surveyed facilities were issued findings of actual harm as opposed to the 3 percent of surveyed facilities that were issued findings of immediate jeopardy and those issued findings of substandard quality of care.

Overall, during the same time, approximately 25 percent of those facilities surveyed received a combination of actual harm, immediate jeopardy, and/or substandard quality of care violations. Also, it is important to note that the number of recipient facilities receiving these severe violations increased annually between CYs 2004 through 2006 and declined beginning in CY 2007. (Unlike the earlier 2007 Legislative Report, this report uses calendar year data; this is because FY 2003-04 data is less complete than CY 2004 data in that the federal survey reporting system that supplies this data went into production during FY 2003-04.) The pattern of a decline and rise in citations and deficiencies may be partially the result of California’s fiscal response to 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.

CYs	Total SNFs Surveyed	Immediate Jeopardy		Actual Harm		Substandard Quality of Care		Totals	
		Number of Receiving Facilities <sup>1</sup>	Recipients as a Percentage of Total SNFs	Number of Receiving Facilities <sup>1</sup>	Recipients as a Percentage of Total SNFs	Number of Receiving Facilities <sup>1</sup>	Recipients as a Percentage of Total SNFs	Total Receiving Facilities	Total Percentage
2004	1241	33	3%	127	10%	34	3%	194	16%
2005	1247	39	3%	162	13%	40	3%	241	19%
2006	1244	56	5%	232	19%	51	4%	339	28%
2007	1257	45	4%	198	16%	44	4%	287	24%

<sup>1</sup> Individual facilities can receive two or more deficiencies of these types in any year.

***(E) The number of freestanding SNFs that received state citations and the number and class of citations issued during calendar years prior to and after the implementation of this statute.***

Available data from all SNFs subject to the State licensing survey process was used in this analysis—it is not based on the sample used in Sections (A) and (B). During calendar year 2004, 310 SNFs received State citations. That number declined to 247 in 2005, rising to 317 in 2006, and 389 in 2007. Because individual SNFs can receive two or more citations in a given calendar year, the number of citations issued exceeds the number of recipient facilities. The total number of citations issued dropped from 471 to 346 between 2004 and 2005. Total citation issuance rose to 510 in 2006 and to 698 in 2007. Citation issuance by type is summarized in the following table:

CYs	CITATION TYPES				TOTALS
	AA	A	B	RD <sup>b</sup>	
2004	11	73	384	0	471
2005	13	49	283	0	346
2006	12	96	400	1	509
2007	23	103	570	2	698
<b>TOTALS</b>	<b>59</b>	<b>321</b>	<b>1637</b>	<b>3</b>	<b>2024</b>

<sup>a</sup>Willful material falsification/willful material omission

<sup>b</sup>Retaliation/discrimination

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

In the period prior to the implementation of AB1629, inflation-adjusted pay for LVNs increased gradually, but for RNs and CNAs the pay trends were more mixed. Between FY 2003-04 and FY 2005-06, all three of the nursing occupational categories experienced some inflation-adjusted pay decreases, especially CNAs. Since FY 2005-06, however, inflation-adjusted pay has rebounded for all three nursing occupational categories increasing more markedly than in prior years.

L&C determined this by applying the California Consumer Price Index to the nominal wage and salary data collected by OSHPD. Available data for all SNFs was used in this analysis; it was not based on the sample used in Sections (A) and (B).

In addition, average facility expenditures on benefits increased in real terms at first, rising from \$0.50 million in FY 2001-02 to \$0.67 million in FY 2003-04, but stayed fairly constant thereafter.

State Fiscal Year	Avg. Salary & Wage Expenditure by Facility (in thousands) <sup>1</sup>	Avg. Benefit Expenditure by Facility (in thousands) <sup>1</sup>	Average Hourly Earnings		
			RN	LVN	NA
2001-02	\$2,200	\$500	\$24.86	\$19.45	\$10.08
2002-03	\$2,290	\$665	\$23.80	\$19.98	\$10.14
2003-04	\$2,217	\$673	\$26.10	\$20.48	\$10.08
2004-05	\$2,216	\$708	\$26.39	\$20.43	\$9.94
2005-06	\$2,214	\$671	\$26.25	\$20.17	\$9.62
2006-07	\$2,321	\$664	\$26.68	\$20.33	\$9.72
2007-08	\$2,430	\$673	\$27.47	\$20.92	\$10.02

<sup>1</sup> All wage, salary and benefit expenditures, including those of all types of nurses.

***(G) The number of SNF Residents who expressed a desire to return to the community and who subsequently did return to their communities.***

L&C used data from the federal Minimum Data Set (MDS) to determine the numbers of SNF residents who returned to their communities after having expressed a desire to do so in calendar years 2005 and 2006. The MDS contains the results of extensive resident assessments that are required by federal regulation. In 2005 and 2006, 69 and 72 percent respectively of the residents who received MDS assessments expressed a desire to return to their communities upon discharge. This analysis shows that about half of the residents expressing a desire to return to the community were discharged within a year of admission. Moreover, it shows that by May of 2008, cumulatively 60 percent of those admitted in 2005 and 64 percent of those admitted in 2006 were discharged to homes or private apartments in which home health services were available.

**RESIDENTS WITH PREFERENCE FOR COMMUNITY SETTING DISCHARGED TO HOME OR LESSER LEVEL OF CARE  
ADMISSIONS IN CY 2005 AND 2006 – DISCHARGES DURING CYs 2005 – 2008**

DESCRIPTION			ADMISSION in CY 2005 DISCHARGED during 2005-2008	ADMISSION in CY 2006 DISCHARGED during 2006-2008
	CY 2005	CY 2006		
<b>TOTAL ADMISSIONS</b> (For those expressing discharge preference)	127,509	148,946		
Total Residents w/Preference to Return to the Community Percent of Total Admissions	<b>88,153</b> 69%	<b>107,570</b> 72%		
<b>DISCHARGE RATES FOR RESIDENTS W/PREFERENCE TO RETURN TO THE COMMUNITY</b>				
<b>Residents Discharged to Home or a Lesser Level of Care</b>				
1. Private Home/Apartment Without Home Health Services	7,555	10,689	11,184	14,105
2. Private Home/Apartment With Home Health Services	22,553	33,567	32,407	43,469
3. Board and Care Assisted Living	5,075	7,423	9,473	11,800
<b>Total</b>	<b>35,183</b>	<b>51,679</b>	<b>53,064</b>	<b>69,374</b>
<b>Percent of Residents Discharged to Home or a Lesser Level of Care</b>	<b>40%</b>	<b>48%</b>	<b>60%</b>	<b>64%</b>

## Report to the Legislature

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

January 1, 2009

### 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 Public Health (CDPH) to provide two annual reports to the legislature on staffing levels in freestanding skilled nursing facilities (SNFs) (Appendix A)<sup>i</sup>. The first was due on January 1, 2007, and the second on January 1, 2009. The first report is to cover the three years immediately prior to the passage of AB 1629 (state fiscal years [FYs] 2002-03, 2003-04, and 2004-05), and the second, a period occurring two years after the implementation of the legislation (FY 2005-06 and 2006-07). The information presented in the first report is to serve as a baseline against which the information in the second report can be compared.

AB 1629 requires two specific categories of information concerning the extent to which SNFs complied with the Health and Safety (H&S) Code §1276.5 requirement 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

This report is the second of the two required under W&I Code §14126.033. It reproduces the information presented in the prior report, appends the FY 2005-06 and FY 2006-07 results to it, and discusses the changes in SNF staffing levels between the periods covered by the first and second reports.

It should be emphasized that the “quality of care” indicators mentioned in this report—e.g., staffing, wages/benefits, numbers of state citations and federal/state deficiencies, etc.—are not the exclusive list of quality of care indicators nor are they the Department’s chosen list—they are factors specified in statute.

Nursing home quality is “multidimensional, encompassing clinical, functional, psychosocial and other aspects of resident health and well being.”<sup>ii</sup> Commonly used quality dimensions include quality of care, quality of life, nurse staffing, and compliance

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<sup>i</sup> 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 AB 1075, Shelley, Chapter 684, Statutes of 2001.

<sup>ii</sup> Validation of Long-Term and Post-Acute Care Quality Indicators.” June 2003. Prepared by Abt Associates Inc. Prepared for Yael Harris, Centers for Medicare & Medicaid Services.

with state and federal licensure and certification requirements. This report, per state statute, only focuses on two of these dimensions-- nurse staffing, and compliance with state and federal licensure and certification requirements. Quality of care is focused largely on residents' health and safety and encompasses the quality of both care processes and care outcomes. Quality of life encompasses factors such as autonomy, dignity, individuality, comfort, meaningful activity and relationships, a sense of security, and spiritual well-being.<sup>iii</sup> Nurse staffing quality is comprised of several factors including staffing levels, staff retention and turnover, and staff wages and benefits. Quality relating to compliance with licensing and certification is assessed based on the scope and severity of facilities' deficiencies and citations.

## II. Study Methods

There are somewhat over 1,000 skilled nursing facilities covered by AB1629 in California. Some of the needed data for this report are available from various public sources. To collect additional data each year a statistically valid stratified random sample was audited, the results of which can be extrapolated to the entire population of California skilled nursing facilities.

Facilities were notified of the impending audits in an All-Facilities Letter from Licensing and Certification (the CDPH program responsible for preparing the AB 1629 Legislative reports) explaining the audit process. This All-Facilities Letter is included as Appendix B. Prior to each audit, the responsible auditor contacted the affected facility by telephone to inform the administrator that he or she would arrive unannounced during a specified two-week window in order to assess compliance with the staffing requirements contained in H&S Code §1276.5. The auditors informed each administrator of the one-year period that would be covered by the audit, and that 24 randomly selected days during the audit period would be assessed. The administrator was also informed that the days to be audited would be generated electronically when the audit began, and could not be known ahead of time. Finally, the administrator was asked to locate and have readily available all necessary staffing records. After each initial phone call, auditors summarized the information covered during the call in a confirmation fax to the facility administrator.

The sampling design took into consideration the new Medi-Cal rate-setting methodology established by AB 1629. This methodology increased the rates SNFs receive for their Medi-Cal residents, and funded this increase 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, especially for facilities that provide more direct nursing care to residents. The legislative requirement for the baseline and follow-up staffing reports was intended to measure the extent to which SNFs used these increased reimbursements to meet or exceed the 3.2 NHPPD requirement.

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<sup>iii</sup> "Nursing Home Quality: Twenty Years After the Omnibus Budget Reconciliation Act of 1987." JM Wiener et al. Prepared for the Henry J. Kaiser Family Foundation. December 2007.

To better characterize the effects of a rate increase on staffing, L&C stratified the study sample into 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		FY 2002-03 Through FY 2004-05 Sample		FY 2005-06 Sample		FY 2006-07 Sample	
Beds	Region	Total Facilities	Sample Facilities	Total Facilities	Sample Facilities	Total Facilities	Sample Facilities
59 & fewer	L. A.	81	7	80	16	80	22
	Bay Area	68	6	68	19	65	17
	All Other	111	10	106	30	104	28
60 & above	L. A.	267	23	263	38	260	47
	Bay Area	145	13	139	34	137	36
	All Other	398	34	391	109	391	102
All Facilities, Statewide		1070	93	1047	246	1037	252

While nine percent of all active, licensed, free-standing SNFs were included in the audit sample in the earlier period, approximately 24 percent were included in both the FY 2005-06 and the FY 2006-07 samples. The earlier sample was 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. The larger sample sizes used in the follow-up studies achieves a 95 percent significance level and a three percent margin of error.

Within each facility, L&C audited a stratified random sample of 24 days. 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.

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. Auditors held exit conferences with facility administrators to present their findings, to answer questions, and to go over any next steps that might be necessary.

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.

Given the possibility of receiving a deficiency for noncompliance from one of these audits plus Medi-Cal's new rate-setting practices, it should be noted that both policy incentives and enforcement actions are now in place to support compliance with the minimum staffing requirements.

### **III. Results**

#### *a. Data Availability*

As shown in Table 2, staffing data were available to L&C auditors on 76, 91, and 94 percent of the days sampled in 2002-03, 2003-04 and 2004-05, respectively. That figure rose to 98 percent in 2005-06 and 97 percent in 2006-07. 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.
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 many cases, the lack of staffing data was brought about when the current owner of a facility did not have access to a previous owner's payroll records following a change of ownership. L&C determined that it has no legal authority to require the current owner to acquire and make available payroll records from a previous period of ownership. 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.

**Table 2: Number and Percentage of Sample Days<sup>a</sup> on Which Data Was Available**

Stratum		No. Facilities in Sample, 02-05	No. Facilities in Sample, 05-06	No. Facilities in Sample, 06-07	2002-03		2003-04		2004-05		2005-06		2006-07	
Beds	Region				Number of Days With Data	% Days With Data	Number of Days With Data	% Days With Data	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	16	22	102	61%	141	84%	147	88%	384	100.00%	516	97.73%
	Bay Area	6	19	17	131	91%	144	100%	144	100%	455	99.78%	403	98.77%
	All Other	10	30	28	179	75%	221	92%	237	99%	707	98.19%	669	99.55%
60 & above	L. A.	23	38	47	375	68%	487	88%	520	94%	912	100.00%	1099	97.43%
	Bay Area	13	34	36	266	85%	304	97%	310	99%	793	94.40%	832	96.30%
	All Other	34	109	102	649	80%	735	90%	743	91%	2537	96.10%	2375	97.02%
All Facilities, Statewide		93	246	252	1702	76%	2032	91%	2101	94%	5788	98%	5894	97%

<sup>a</sup>Twenty-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 only 15 percent of the facilities in the total statewide sample either met or exceeded 3.2 NHPPD on all sample dates for which data was available in FY 2002-03. That figure rose to 20 and 24 percent in 2003-04 and 2004-05, respectively. In the two years after the implementation of AB 1629, the full compliance rate rose to 26 percent of all facilities sampled in 2005-06 and to 31 percent in 2006-07.

Hence, in comparing the two periods before and after the implementation of AB 1629, it is fair to say that SNFs have been gradually but steadily moving towards full compliance.

**Table 3: Number and Percentage of Facilities in Which the NHPPD Ratio Was at or Above 3.2 for All Days Sampled<sup>a</sup>**

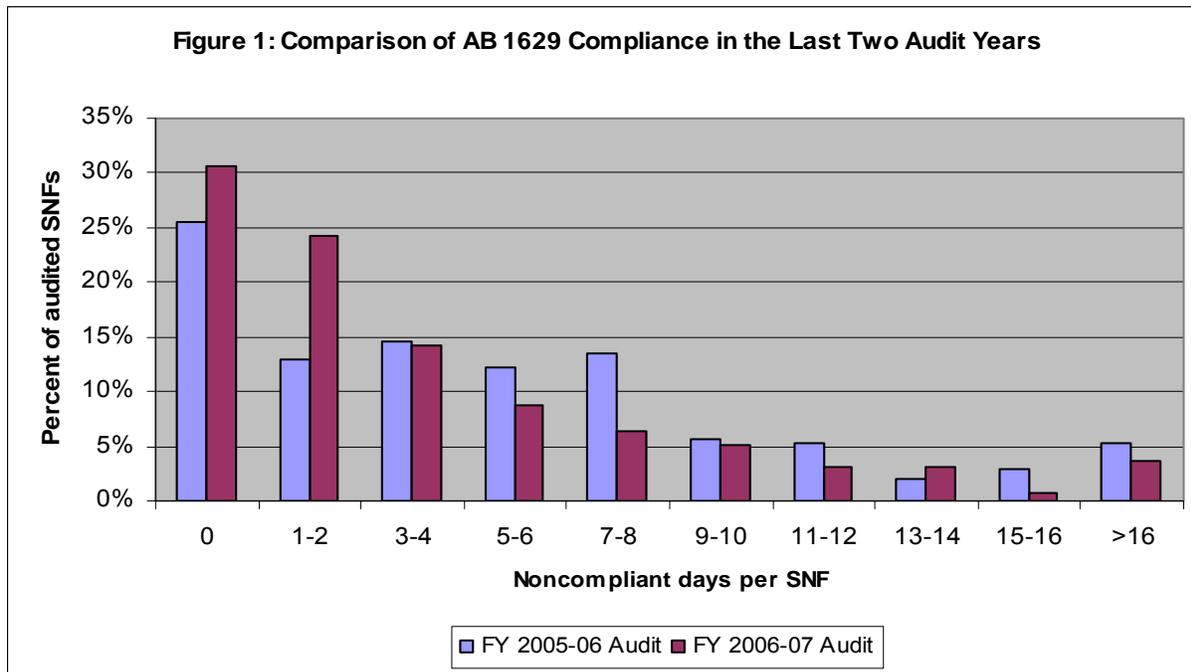
Stratum		2002-03		2003-04		2004-05		2005-06		2006-07	
Beds	Region	Number of Facilities ≥ 3.2	% of Facilities ≥ 3.2	Number of Facilities ≥ 3.2	% of Facilities ≥ 3.2	Number of Facilities ≥ 3.2	% of Facilities ≥ 3.2	Number of Facilities ≥ 3.2	% of Facilities ≥ 3.2	Number of Facilities ≥ 3.2	% of Facilities ≥ 3.2
59 & fewer	L. A.	2	29%	2	29%	4	57%	2	12.50%	7	31.82%
	Bay Area	0	0%	0	0%	1	17%	8	42.11%	4	23.53%
	All Other	1	10%	2	20%	3	30%	10	33.33%	9	32.14%
60 & above	L. A.	5	22%	6	26%	5	22%	7	18.42%	14	29.79%
	Bay Area	1	8%	1	8%	1	8%	10	28.57%	13	36.11%
	All Other	5	15%	8	24%	8	24%	26	23.85%	30	29.41%
All Facilities, Statewide		14	15%	19	20%	22	24%	63	25.61%	77	30.56%

<sup>a</sup>Twenty-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 compared to the same information two years after the implementation of AB 1629.*

Both before and after the implementation of AB 1629, only a small proportion of the SNFs in the study sample have been compliant with the 3.2 NHPPD requirement on all of the 24 days audited in any one year. Full compliance rates by fiscal year are shown in Table 3, above. The full compliance rate, however, is neither the only, nor necessarily the most informative, staffing compliance metric. Because it makes no distinction among the majority of facilities that fall in the noncompliant range, the amount of information it conveys is very limited. The noncompliant group contains SNFs that were out of compliance anywhere from one to 24 audited days.

Progress in complying with AB 1629 can be gauged not only by increases in fully compliant facilities, but also by trends in noncompliant facilities having fewer noncompliant days. Progress along these lines is depicted in Figure 1. It suffices to illustrate this with a comparison of the last two audit years because random samples of approximately the same number of facilities (250) were audited in each of these years and compliance efforts by SNFs have been ongoing.



The leftmost bars in Figure 1 show that fully compliant facilities (i.e. those with zero noncompliant days) increase between the last two audits from 26 percent to 31 percent. Yet, including in the analysis the next set of bars of facilities that either had one or two noncompliant days reveals that overall progress toward compliance has been much greater than it first appears. Adding the two leftmost sets of bars together by respective years reveals that facilities with two or less noncompliant days grew between the last two audits from 39 percent to 55 percent, or a forty percent increase in relative terms (i.e.  $(5+11)/39 \times 100 = 40$ ). Moreover, from this perspective, over half the sample facilities in the last audit year are fully compliant or nearly fully compliant. Extrapolating these sample results to the entire population of over a thousand SNFs is cautioned; yet,

with such a high percentage change, it is statistically likely that this reflects a substantial change in the SNF population overall.

Note, lastly, that relatively few facilities in each audit year—represented by sets of bars on the right hand side of Figure 1—accounted for a disproportionate number of the noncompliant days.

Measuring compliance rates for each and every day audited in the sample—instead of the focus being on the number of facilities that were fully compliant on all twenty-four days audited—provides an alternative method for assessing compliance. Table 4 reports mean NHPPD values by fiscal year and sample stratum. The mean is the average of all 24 daily NHPPD values in the current fiscal year—regardless of whether those days are at, above or below 3.2 NHPPD.

Table 4 shows that daily NHPPD sample means were almost always above 3.2. In only two cases—the two Bay Area strata in FY 2002-03— were NHPPD staffing below 3.2. All statewide (non-stratum-specific) means exceeded 3.2 NHPPD. The lower bounds of the 95 percent confidence intervals appearing in Table 4 are also above 3.2 NHPPD in all but four cases. The statistical inference that the true populations mean equals or exceeds 3.2 is strongest when the lower bound of the 95% confidence interval around the sample mean does not fall below 3.2.

With the exception of the facilities in Los Angeles County, mean NHPPD values rose between the prior study period and 2005-06 and 2006-07. Statewide, mean daily NHPPD values rose by about 0.03 a year between 2002-03 and 2005-06; and it rose about 0.05 between 2005-06 and 2006-07. In most areas of the State, NHPPD values rose more steeply between 2004-05 and 2005-06 than they had between any prior periods; even greater rates of increase would have been reflected in the statewide means had it not been for the NHPPD declines experienced by Los Angeles County. In 2006-07, the mean NHPPD values of all the strata exceeded 3.4 with the exception of the 3.84 average calculated for large LA SNFs; in this last audit for the first time, all strata had mean NHPPD values that exceeded 3.3.

Table 5 reports simple counts and percentages of audited days that were at or above 3.2 NHPPD. Whereas most facilities were not fully compliant (Table 3), most facilities were compliant on most of the days audited (Table 5). Table 5 reports a compliance rate based on days rather than on facilities, as was done in Table 3. Over the course of the earlier study period (2002-03 through 2004-05), the percentage of days at or above 3.2 NHPPD rose from 46 to 65 percent. Between 2004-05 and 2005-06, that rate increased to 77 percent, while further increasing to 83 percent in 2006-07. While 83 percent of all sampled days were compliant in 2006-07, only 31 percent of sampled *facilities* were fully compliant (as shown in Table 3).

**Table 4: Annual NHPPD Sample Means, Standard Deviations, and 95% Confidence Interval Ranges 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	3.27	3.345
		Bay Area	3.154	0.433	3.102	3.206
		All Other	3.24	0.68	3.188	3.293
	<b>Statewide</b>		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	0.52	3.202	3.373
		All Other	3.552	0.568	3.477	3.628
	60 & Above	L.A	3.355	0.398	3.319	3.39
		Bay Area	3.241	0.345	3.203	3.28
		All Other	3.264	0.435	3.232	3.295
	<b>Statewide</b>		3.344	0.01	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	0.42	3.35	3.421
		Bay Area	3.248	0.285	3.216	3.28
		All Other	3.293	0.363	3.267	3.32
	<b>Statewide</b>		3.37	0.009	3.352	3.388
2005-2006	59 & Fewer	L.A	3.345	0.382	3.307	3.383
		Bay Area	3.514	0.436	3.474	3.555
		All Other	3.529	0.505	3.491	3.566
	60 & Above	L.A	3.223	0.363	3.199	3.246
		Bay Area	3.48	0.381	3.453	3.506
		All Other	3.407	0.429	3.39	3.424
	<b>Statewide</b>		3.407	0.006	3.396	3.418
2006-2007	59 & Fewer	L.A	3.441	0.518	3.396	3.485
		Bay Area	3.487	0.422	3.444	3.53
		All Other	3.554	0.444	3.521	3.588
	60 & Above	L.A	3.384	0.298	3.367	3.402
		Bay Area	3.474	0.465	3.441	3.507
		All Other	3.46	0.4	3.444	3.477
	<b>Statewide</b>		3.459	0.005	3.448	3.469

**Table 5: Number and Percentage of Sample Days on Which the NHPPD Ratio Was At or Above 3.2<sup>a,b</sup>**

Stratum		No. Facilities in Sample, 02-05	No. Facilities in Sample, 05-06	No. Facilities in Sample, 06-07	2002-03		2003-04		2004-05		2005-06		2006-07	
Beds	Region				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	Number of Days ≥ 3.2	% of Days ≥ 3.2	Number of Days ≥ 3.2	% of Days ≥ 3.2
59 & fewer	L. A.	7	16	22	88	52%	128	76%	126	75%	271	71%	399	77%
	Bay Area	6	19	17	65	45%	78	54%	77	53%	371	82%	319	79%
	All Other	10	30	28	154	64%	187	78%	190	79%	573	81%	582	87%
60 & above	L. A.	23	38	47	241	44%	339	61%	360	65%	618	68%	918	84%
	Bay Area	13	34	36	122	39%	163	52%	193	62%	660	83%	702	84%
	All Other	34	109	102	362	44%	441	54%	500	61%	1939	77%	1982	83%
All Facilities, Statewide		93	246	252	1032	46%	1336	60%	1446	65%	4432	77%	4902	83%

<sup>a</sup>Twenty-four days per year, per facility, were audited for each FY

<sup>b</sup>Based only on days for which staffing data was available

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

### **I. Legislative Requirements**

AB 1629 requires the California Department of Public Health (CDPH) to report Nursing Staff Salary, Wage, and Retention Rates to the Legislature on January 1, 2007, and again on January 1, 2009 (Appendix A). The earlier report covered the three years prior to the implementation of AB 1629 (fiscal years 2002-3, 2003-04 and 2004-05). This second report covers two additional one-year periods, the two years following the implementation of AB 1629. These periods consist of FY 2005-06 and FY 2006-07. The legislation requires that the corresponding information in the two reports be compared in the second report.

### **II. 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 and Development (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.

### **III. Results**

Tables 6 and 7 report nursing staff payroll expenditures and pay rates in California SNFs for FYs 2001-02, 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, and 2007-08<sup>4</sup>. The data covering the first three fiscal years appeared in the previously submitted legislative report.

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). With one exception, to correspond to State Fiscal Years, the CCPI inflation rate was calculated from June of one year to June of the next year; these inflation rates were applied cumulatively to the figures in Table 6 in order to derive the values in Table 7.<sup>5</sup>

Between FY 2001-02 and FY 2007-08, average hourly earnings have generally been increasing in nominal terms for Registered Nurses, Licensed Practical Nurses and Nurse's Assistants as is shown in Table 6.

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<sup>4</sup> 2007-08 data is actually the latest OSHPD report which is for Calendar Year 2007. According to the way OSHPD puts facility data into its reports, its FY 2006-07 report basically contains 2006 data for the bulk of facilities; its Calendar Year 2007 report basically contains 2007 data for the bulk of facilities. This is the most recent data available.

<sup>5</sup> Between FY 2006-07 and FY 2007-08, the inflation rate was calculated for six months from June-to-December in 2007 because, as mentioned in Footnote 1, the latter data is from the Calendar Year 2007 report.

The picture is more mixed, however, for the average inflation-adjusted earnings shown in Table 7 and Figure 2. While average earnings for all three occupations fluctuated up and down, for Registered Nurses and Licensed Practical Nurses the trend was more markedly up, whereas for Nurse's Assistants the trend was most of the time down.

Since FY 2005-06, annual inflation-adjusted earnings have markedly increased for all three occupational categories compared with the earlier period. Between FY 2001-02 and FY 2005-06, annual inflation-adjusted pay averaged a 1.4 percent increase for Registered Nurses, a 0.9 percent increase for Licensed Practical Nurses and a 1.1 percent decrease for Nurse's Assistants, while since FY 2005-06 annual inflation-adjusted pay averaged a 2.3 percent increase, a 1.9 percent increase, and a 2.1 percent increase, respectively.

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

State Fiscal Year	Avg. Salary & Wage Expenditure by Facility (in thousands) <sup>a</sup>	Avg. Benefit Expenditure by Facility (in thousands) <sup>a</sup>	Avg. Salary & Wage Expenditures by SNFs (in thousands)			Average Hourly Earnings <sup>b</sup>		
			RN	LVN	NA	RN	LVN	NA
2001-02	\$2,200	\$500	\$250	\$370	\$720	\$24.86	\$19.45	\$10.08
2002-03	\$2,340	\$680	\$250	\$400	\$770	\$24.32	\$20.42	\$10.36
2003-04 <sup>c</sup>	\$2,340	\$710	\$250	\$420	\$770	\$27.55	\$21.62	\$10.64
2005-06	\$2,540	\$770	\$270	\$470	\$780	\$30.12	\$23.14	\$11.04
2006-07	\$2,760	\$790	\$290	\$530	\$830	\$31.73	\$24.18	\$11.56
2007-08 <sup>d</sup>	\$2,890	\$800	\$310	\$560	\$850	\$32.67	\$24.88	\$11.92

<sup>a</sup> All wage, salary, and benefit expenditures, including those for all types of nurses.

<sup>b</sup> Calculated by dividing the average annual salary and wage expenditures by SNFs, as reported in this table, by the annual average hours worked.

<sup>c</sup> 2003-04 was the last reported year in the prior (2007) Legislative Report. Data were unavailable for later years at the time of that report's preparation.

<sup>d</sup> 2007-2008 actually is the latest OSHPD data, the 2007 calendar year report. OSHPD's FY 2006-07 report actually only contains 2006 data for most SNFs.

**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	Cumulative Inflation Rate	Avg. Salary & Wage Expenditure by Facility (in thousands) <sup>a</sup>	Avg. Benefit Expenditure by Facility (in thousands) <sup>a</sup>	Avg. Salary & Wage Expenditures by SNFs (in thousands)			Average Hourly Earnings <sup>b</sup>		
					RN	LVN	NA	RN	LVN	NA
2001-02 <sup>d</sup>	--	--	\$2,200	\$500	\$250	\$370	\$720	\$24.86	\$19.45	\$10.08
2002-03	2.15%	2.15%	\$2,290	\$665	\$245	\$391	\$753	\$23.80	\$19.98	\$10.14
2003-04 <sup>c</sup>	3.11%	5.26%	\$2,217	\$673	\$237	\$398	\$729	\$26.10	\$20.48	\$10.08
2004-05	2.81%	8.07%	\$2,216	\$708	\$239	\$404	\$699	\$26.39	\$20.43	\$9.94
2005-06	4.77%	12.84%	\$2,214	\$671	\$235	\$410	\$680	\$26.25	\$20.17	\$9.62
2006-07	3.08%	15.92%	\$2,321	\$664	\$244	\$446	\$698	\$26.68	\$20.33	\$9.72
2007-08	1.01% <sup>e</sup>	16.93%	\$2,430	\$673	\$261	\$471	\$715	\$27.47	\$20.92	\$10.02

<sup>a</sup> All wage, salary, and benefit expenditures, including those for all types of nurses.

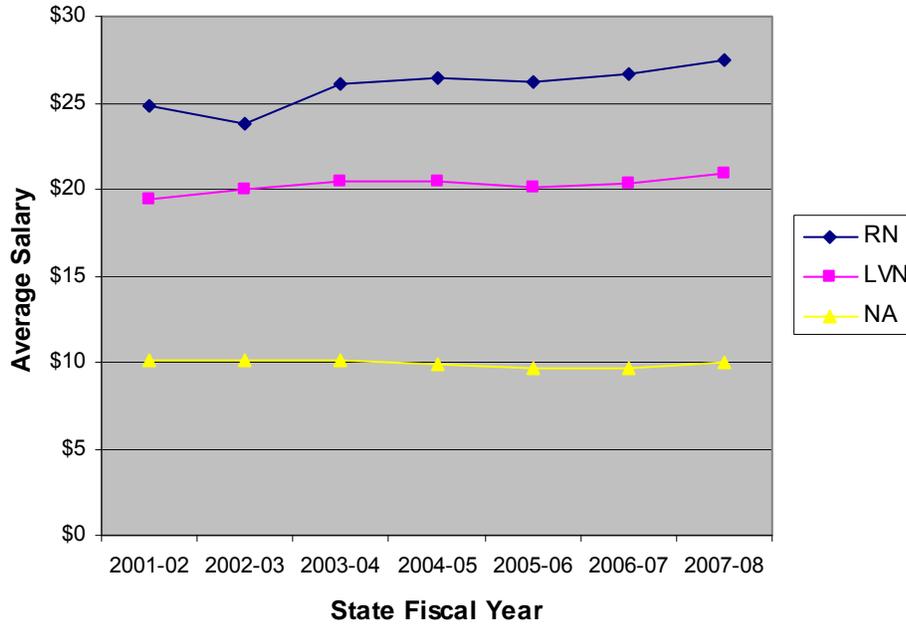
<sup>b</sup> Calculated by dividing the average annual salary and wage expenditures by SNFs, as reported in this table, by the annual average hours worked.

<sup>c</sup> 2003-04 was the last reported year in the prior (2007) Legislative Report. Data were unavailable for later years at the time of that report's preparation.

<sup>d</sup> FY 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 cumulative inflation rate. To best accord with the State Fiscal Year, inflation is calculated on a June to June basis. (The inflation rate numbers presented in the first Legislative Report were corrected here; it is unclear how the inflation rates used in the first report were calculated.)

<sup>e</sup> Because the 2007-08 data is really just the latest calendar year 2007 report, the inflation rate used in this one case is for six months from June 2007 until December 2007.

**Figure 2: Average Inflation-adjusted Hourly Earnings of the Three Kinds of SNF Nurses**



## Nursing Staff Retention Rates

The OSHPD staffing retention rate data on which this analysis is based 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. The reporting period is generally twelve months. 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 3a through 3e and Figures 4a through 4e, which are detailed profiles of SNF nursing staff retention rates between 2002 and 2006.<sup>6</sup> Figures 3a through 3e present the rates for RNs and LVNs, while Figures 4a through 4e present the CNA rates. Figures 3a-3d and 4a-4d appeared in the previous report. They are reproduced here as they appeared in that previous report (except for some necessary renumbering) to serve as the baseline for the study period comparison called for in the statute.

The graphs in Figures 3a-3e and 4a-4e—known as histograms—show the numbers of facilities whose retention rates fall into a set of uniform categories. The categories—10 percentage-point 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 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 3a-3e and 4a-4e indicate that most facilities retained well over half of their nursing staff for the 2002, 2003, 2004, 2005, and 2006 reporting periods.<sup>7</sup> In fact, retention rates for most facilities were in the 60 to 80 percent range during each of these periods. On three occasions (see Figures 3b, 3d, and 4a), the majority of facilities retained between 70 and 80 percent of their nursing staff.

Neither set of histograms (Figures 3a through 3e, nor Figures 4a through 4e) show an unbroken trend in retention rates. For RNs and LVNs, the bulge in the

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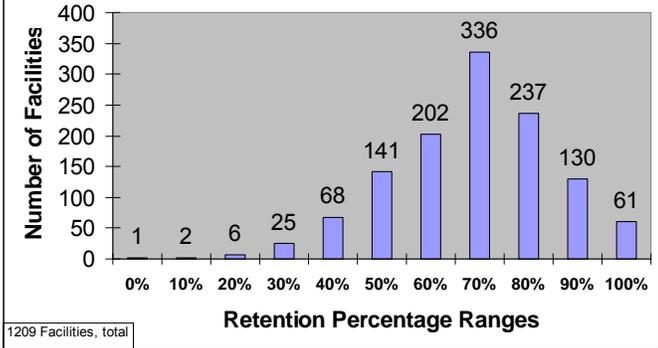
<sup>6</sup> Despite OSHPD's recent publication of data for Calendar Year 2007, 2007 retention data is not included here because it is not audited and not reliable for use in this measure.

<sup>7</sup> 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.

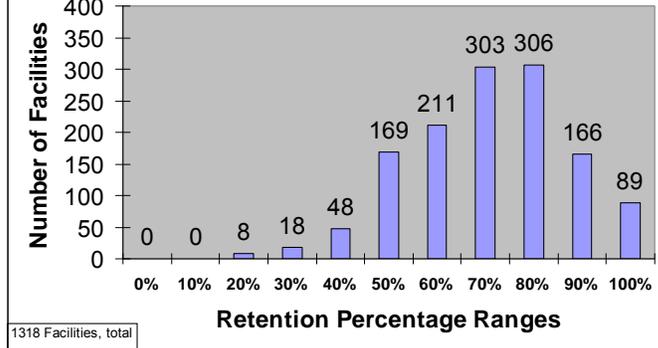
retention rate curve moves to the right between 2002 and 2003, but moves back toward 2002 levels in 2004. In 2005, a rightward movement resumed. This pattern indicates that retention rates began to improve, reversed, and then began again to improve over the 2002-2005 period. In 2006, the calendar-reporting period for this second report to the Legislature, retention rates improved markedly over 2005 levels

CNA retention rates also improved between 2002 and 2003, and then reversed direction between 2003 and 2004. Unlike RNs and LVNs, however, retention rates continued to decline between 2004 and 2005, finally experiencing a strong recovery in 2006 (the calendar-year reporting period for this second report to the legislature).

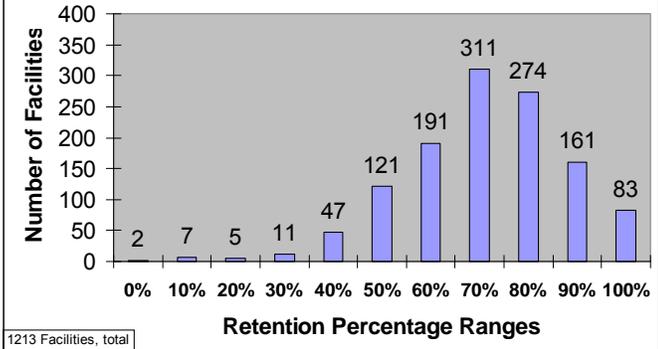
**Figure 3a: Retention Percentage Frequencies, 2002, RNs and LVNs**



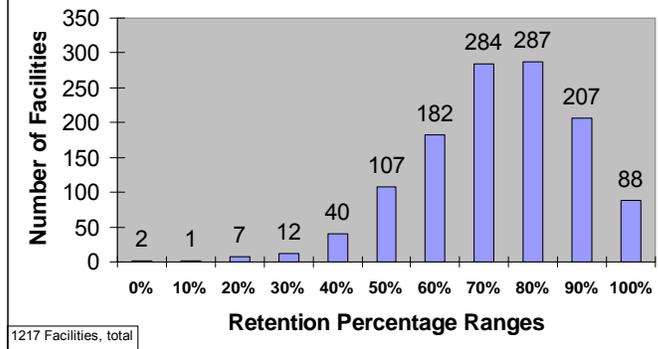
**Figure 3b: Retention Percentage Frequencies, 2003, RNs & LVNs**



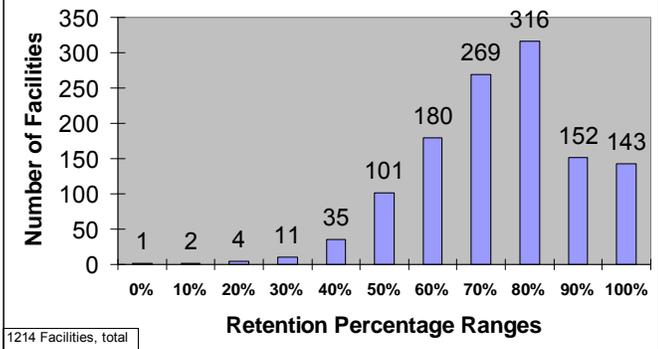
**Figure 3c: Retention Percentage Frequencies, 2004, RNs and LVNs**



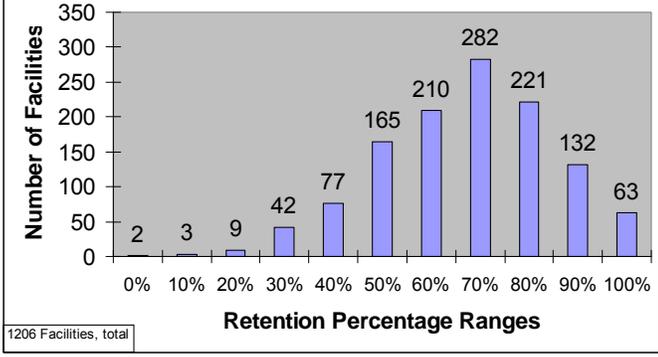
**Figure 3d: Retention Percentage Frequencies, 2005, RNs & LVNs**



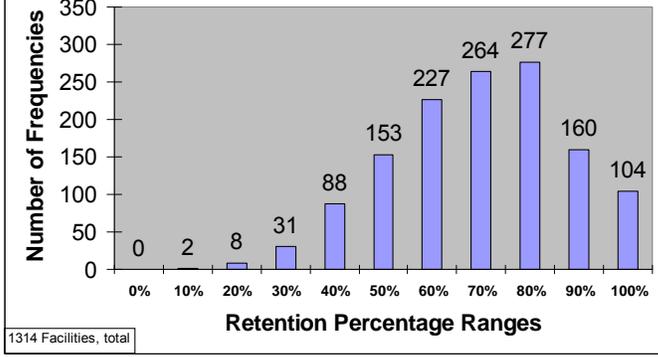
**Figure 3e: Retention Percentage Frequencies, 2006, RNs and LVNs**



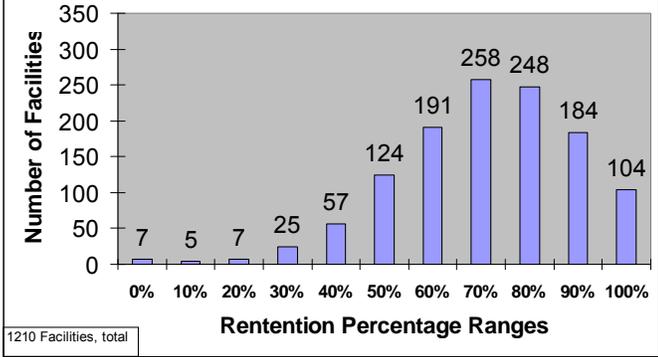
**Figure 4a: Retention Percentage Frequencies, 2002, CNAs**



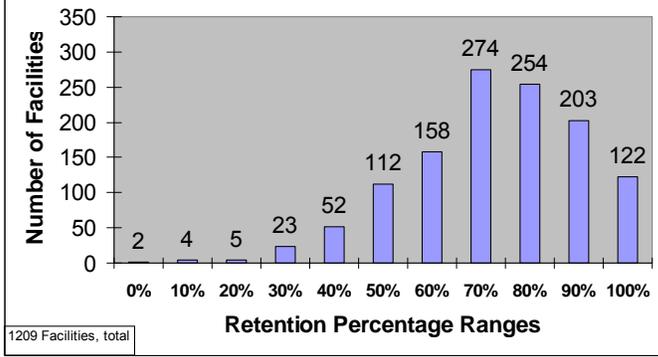
**Figure 4b: Retention Percentage Frequencies, 2003, CNAs**



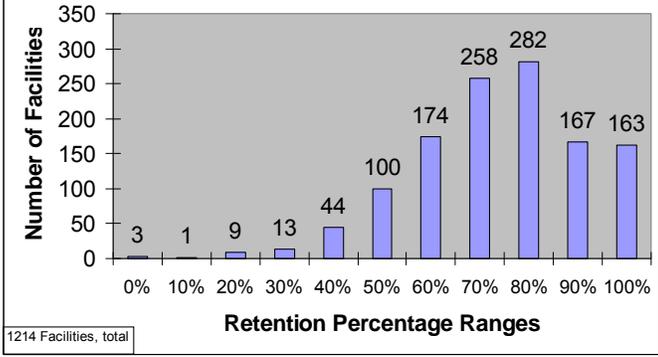
**Figure 4c: Retention Percentage Frequencies, 2004, CNAs**



**Figure 4d: Retention Percentage Frequencies, 2005, CNAs**



**Figure 4e: Retention Percentage Frequencies, 2006, CNAs**



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

### **I. Legislative Requirements**

AB 1629 requires CDPH to provide specific information about the results of the surveys and complaint investigations conducted by L&C. For this second report, the Legislature requires comparisons of the examinations of the results of the following two specific categories of information prior to the implementation of AB 1629 and two years afterwards:

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 statute.
2. The number of freestanding skilled nursing facilities that received state citations and the number and class of citations issued.

### **II. Study Methods**

Nursing home quality is “multidimensional, encompassing clinical, functional, psychosocial and other aspects of resident health and well being. Commonly used quality dimensions include quality of care, quality of life, nurse staffing, and compliance with state and federal licensure and certification requirements. This report, per state statute, only focuses on two of these dimensions-- nurse staffing, and compliance with state and federal licensure and certification requirements. Quality of care is focused largely on residents’ health and safety and encompasses the quality of both care processes and care outcomes. Quality of life encompasses factors such as autonomy, dignity, individuality, comfort, meaningful activity and relationships, a sense of security, and spiritual well-being.<sup>x</sup> Nurse staffing quality is comprised of several factors including staffing levels, staff retention and turnover, and staff wages and benefits. Quality relating to compliance with licensing and certification is assessed based on the scope and severity of facilities’ deficiencies and citations.

The results reported in this section are the result of analyses on data obtained from the state Electronic Licensing Management System (ELMS) and the Automated Survey Processing Environment (ASPEN). The state citation results presented below are based on data from ELMS, the complaint data and survey results are from ASPEN.

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<sup>x</sup> “Nursing Home Quality: Twenty Years After the Omnibus Budget Reconciliation Act of 1987.” JM Wiener et al. Prepared for the Henry J. Kaiser Family Foundation. December 2007.

### III. Results

#### State Citations

Licensing and Certification issues state citations during complaint investigations and special incident investigations. Citations fall into five classes:

- Class AA: issued when a violation is the direct proximate cause of a resident death (Penalty Range: \$25,000 – 100,000);
- Class A: issued when violations present either an imminent danger of death or serious harm to residents, or the substantial probability of death or serious harm to residents (Penalty Range: \$2,000-20,000);
- Class B: issued for violations that have a direct or immediate relationship to the health, safety, or security of residents but do not meet the requirements for Class A or Class AA citations (Penalty Range: \$100 - \$1,000);
- Class RD: issued for retaliation and/or discrimination against a facility resident (Penalty Range – Treated as a Class A or B depending on the scope and severity); and
- Class WMF/WMO: issued for willful material falsification of information, or willful material omission of information from a resident's health care record (Penalty Range: \$2,500 – 10,000).

These citations are based upon California State HSC 1424 (Appendix C: *Health Safety Code, §1424*) and result from the investigation of facility reports or complaints. Although all of the citations reflect non-compliance that has caused, or has the potential to cause harm to SNF residents, those classified as AA and A pose the most amount of direct or immediate threat to the residents' health and safety while those classified as B pose the least.

#### Findings

Table 8 shows incremental declines and increases in the total numbers of citations issued to SNFs between calendar years 2001 and 2007; declines were in earlier years and increases were in more recent years. State citations decreased from 813 to 346, a 57 percent decline between calendar years 2001 and 2005, and then increased from 510 to 698, a 37 percent rise between calendar years 2006 and 2007.

The decline and rise in citations in the face of a steady increase in the complaint load may be partially the result of California's fiscal response to 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. The percentage of vacancies statewide rose from five percent in 2001 to ten percent in 2003, dropping to just under eight percent in 2004. The increase in surveyor positions and salaries in 2006 may have lead to: 1) less staff turnover and a reduction of complaint backlogs, 2) an increase in the investigation of new complaints, and finally 3) an increase in the number of state citations issued.

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

<b>Calendar Year</b>	<b>Complaints Filed<sup>a</sup></b>	<b>Citations Issued for Title 22 &amp; H&amp; S Code Deficiencies</b>	<b>Percent Increases and Declines from 2001</b>	<b>Number of Facilities Issued Citations</b>
2001	-	813	--	398
2002	-	744	-8%	430
2003	8708	718	-12%	351
2004	8694	471	-42%	270
2005	9830	346	-27%	219
2006	11429	510	+47%	317
2007	13691	698	+37%	339

<sup>a</sup>Does not include facility-reported incidents. Counts of complaints fluctuate annually; they are point-in-time accounts. The data in Table 8 are accurate as of 10/2008. Data system became centralized in CY 2003. Earlier complaint data is judged not to be comparable.

Table 9 breaks down citations issued between 2001 and 2007 by citation types, numbers and percentages of those types issued. It also shows the number of recipient facilities for each type. The data shown in Tables 8 and 9 are displayed graphically in Figures 7, 8 and 9.

The issuance of citations to California's SNFs during Calendar Years 2001 through 2007 can be summarized as follows (Please refer to Table 9):

- Approximately 20 percent of all citations issued per year were of the most severe type, AA and A (Yellow Highlight).
- L&C consistently issues more Type B citations than any other citation type (Green Highlight).
- The citation type that L&C issues least often is the Willful Material Falsification/Willful Material Omission (WMF/WMO).
- Include L&C staffing patterns in these figures.

**Table 9: Citations Issuance by Type, Calendar Years 2001-07**

Year	Citation Type	Number of Citations Issued	Percent of Citation Types Issued	Number of Recipient Facilities <sup>c</sup>
2007	AA	23	3%	21
	A	103	15%	73
	B	570	81%	294
	WMF/WMO <sup>a</sup>	0	0	0
	RD <sup>b</sup>	2	1%	1
	<b>TOTAL</b>	<b>698</b>	<b>100%</b>	<b>389</b>
2006	AA	12	2%	10
	A	96	19%	71
	B	400	78%	236
	WMF/WMO <sup>a</sup>	0	0	0
	RD <sup>b</sup>	1	1%	1
	<b>TOTAL</b>	<b>510</b>	<b>100%</b>	<b>317</b>
2005	AA	13	4%	12
	A	49	14%	46
	B	283	82%	189
	WMF/WMO <sup>a</sup>	1	1%	1
	RD <sup>b</sup>	0	0	0
	<b>TOTAL</b>	<b>346</b>	<b>100%</b>	<b>247</b>
2004	AA	11	2%	10
	A	73	15%	64
	B	384	82%	233
	WMF/WMO <sup>a</sup>	3	1%	3
	RD <sup>b</sup>	0	0	0
	<b>TOTAL</b>	<b>471</b>	<b>100%</b>	<b>310</b>
2003	AA	16	2%	15
	A	109	15%	90
	B	590	82%	297
	WMF/WMO <sup>a</sup>	3	1%	3
	RD <sup>b</sup>	0	0	0
	<b>TOTAL</b>	<b>718</b>	<b>100%</b>	<b>405</b>
2002	AA	9	1%	9
	A	144	19%	117
	B	590	79%	369
	WMF/WMO <sup>a</sup>	1	1%	1
	RD <sup>b</sup>	0	0	0
	<b>TOTAL</b>	<b>744</b>	<b>100%</b>	<b>496</b>
2001	AA	23	3%	20
	A	135	17%	105
	B	652	79%	349
	WMF/WMO <sup>a</sup>	3	1%	1
	RD <sup>b</sup>	0	0	0
	<b>TOTAL</b>	<b>813</b>	<b>100%</b>	<b>475</b>

<sup>a</sup>Willful Material Falsification/Willful Material Omission

<sup>b</sup>Retaliation/discrimination

<sup>c</sup> The facility counts shown in this column will not total to the facility counts shown in Table 8. This is because a single facility can receive more than one citation type in a given 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.

### **Federal Deficiencies**

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. 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. Violations of the federal regulations governing long-term health care facilities result in the issuance of a federal deficiency. Such deficiencies are usually issued during these regular periodic federal recertification surveys as opposed to being the result of complaint investigations.

The various deficiency classifications are based on levels of scope and severity that are categorized in an overlapping fashion. Scope is defined as the *extent* of the potential or actual harm to residents. It may be isolated (affecting only one or a few), a pattern (affecting an identifiable group), or widespread (affecting many). Severity is defined as the *amount* of harm or potential harm that could result to residents' health or safety because of noncompliance. The severity of federal deficiencies range in four levels with subcategories ranging from A through L (See Figure 5).

According to 42 CFR 488.301 Definitions (Appendix D), a facility that has been issued deficiencies can be in substantial compliance or in noncompliance. For example, facilities with deficiencies ranging from A through C are considered to be in substantial compliance because their violations cause no actual harm to the residents' health and safety. However, facilities with deficiencies ranging from D through L are considered noncompliant because their violations cause actual harm that ranges from minimal to immediate jeopardy to the health and safety of the residents. The two most egregious categories of federal deficiencies are those causing "actual harm" (subcategories G, H, and I) and those causing "immediate jeopardy" (subcategories J, K, and L).

In order to further understand the type of federal deficiency issued, it is important to note that deficiency categories of the classification system and the corresponding regulations for the violation are not always mutually exclusive. Most simply, a deficiency can be issued for any specific scope and severity category ranging from A through L for a violation of **any one or combination** of the regulations at 42 CFR 483.1. More specifically, a deficiency is defined as "substandard quality of care" (SQOC), if it both falls into one of the subcategories F, H, I, J, K, or L **and** it involves a violation of any combination of standards

which are a **subset** of 42 CFR 483.1, et al. The three standards that would qualify as SQOC are: 42 CFR 483.13 Resident Behavior and Facility Practices, 42 CFR 483.15 Quality of Life, and 42 CFR 482.25 Quality of Care. Thus, the SQOC category overlaps with the Actual Harm (AH) and the Immediate Jeopardy (IJ) federal deficiency categories (See Figure 5). While AH or IJ deficiencies are issued from any part of 42 CFR 483.1, et seq., what are considered SQOC deficiencies are only issued from a subset of this regulation (See Figure 6). Note also that the definition of SQOC entirely excludes subcategory G but includes subcategory F in some cases; while G is of higher severity than F, it is of much less scope. This section emphasizes the AH, IJ and SQOC federal deficiencies.

**Figure 5: FEDERAL DEFICIENCY SCOPE AND SEVERITY TABLE**

<b>SEVERITY</b>	<b>LEVEL 4</b>	<b>J</b>	<b>K</b>	<b>L</b>
	<b>LEVEL 3</b>	<b>G</b>	<b>H</b>	<b>I</b>
	<b>LEVEL 2</b>	<b>D</b>	<b>E</b>	<b>F</b>
	<b>LEVEL 1</b>	<b>A</b>	<b>B</b>	<b>C</b>
		<b>Isolated</b>	<b>Pattern</b>	<b>Widespread</b>
		<b>SCOPE</b>		

**LEGEND**

**LEVEL 1**

**NO ACTUAL HARM**

**LEVEL 2**

**NO ACTUAL HARM** - Potential for more than Minimal Harm that is not Immediate Jeopardy.

**LEVEL 3**

**ACTUAL HARM** - Not Immediate Jeopardy.

**LEVEL 4**

**IMMEDIATE JEOPARDY**

**SUBSTANDARD LEVEL OF CARE**  
1

Immediate jeopardy to resident health or safety; or a pattern of or widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm that is not immediate jeopardy, with no actual harm.

<sup>1</sup> **Substandard Level of Care includes 2F, 3H, 3I, 4J, 4K, 4L**

**Figure 6: 42 CFR 483.1 et seq. Overlap for the Issuance of Federal Deficiencies**



When conditions warrant, L&C issues findings of IJ, AH, and SQOC to SNFs during its regular certification and recertification surveys.

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

In the earlier 2007 Legislative Report, data from a fiscal-year time frame were used. In that report, data from FY 2003-04 were somewhat under-reported because the 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 are known to be somewhat incomplete. This report uses calendar year data beginning in CY 2004. Data collected beginning in CY 2004 are likely to be more complete and accurate.

Table 10 shows the number of Immediate Jeopardy, Actual Harm, and Substandard Quality of Care findings issued during CY 2004 through CY 2007. Overall, findings of AH were issued far more often than the other finding types. Over this time period, the number of Immediate Jeopardy, Actual Harm, and Substandard Quality of Care findings increased until CY 2007. In CY 2007, there was a reduction in the issuance of all of these types of federal deficiencies. The Actual Harm deficiencies had the largest percent decrease at 23 percent ((784-606)/784). Both Immediate Jeopardy and Substandard Quality of Care deficiencies had a 14 percent decrease ((128-110)/128 and (150-129)/150 respectively). At this time, beginning in CY 2007, there has been a modest decline in the number of Immediate Jeopardy, Actual Harm, and Substandard Quality of Care findings.

**Table 10: Findings of Immediate Jeopardy, Actual Harm, and Substandard Quality of Care, Issued Between FYs 2003-04 and 2005-06**

Calendar Year	Total SNFs Surveyed	Number of Immediate Jeopardy Findings <sup>a</sup>	Number of Actual Harm Findings <sup>a</sup>	Number of Substandard Quality of Care Findings <sup>a</sup>	Total Findings Issuance <sup>a</sup>
2004	1241	89	373	89	551
2005	1247	97	443	90	630
2006	1244	128	784	150	1062
2007	1257	110	606	129	845
<b>Totals</b>	<b>4993</b>	<b>424</b>	<b>2206</b>	<b>458</b>	<b>3088</b>

<sup>a</sup>A single facility can receive one or more IJ, AH, and/or SQOC findings.

Table 11 shows the number of Immediate Jeopardy, Actual Harm, and Substandard Quality of Care findings and the number and percentages of facilities with these findings issued during CY 2004 through CY 2007. Overall, findings of Actual Harm were issued far more often than the other finding types. There were similar numbers of Immediate Jeopardy and Substandard Quality of Care findings. Also, by comparison, there were higher percentages of recipient facilities for Actual Harm violations than there were for Immediate Jeopardy and Substandard Quality of Care violations. The percentages of Immediate Jeopardy and Substandard Quality of Care recipient facilities during this time period were very similar.

Table 11 also shows that there was an increase in the issuance of IJ, AH, and SQOC violations until CY 2007. In CY 2007, the issuance of IJ, AH, and SQOC violations declined by 14 percent (128-110/128), 23 percent (784-606/784), and 14 percent (51-44/51), respectively. Also, the percentage of recipient facilities issued IJ, AH, and SQOC violations declined by 1 percent, 3 percent, and 0 percent respectively.

**Table 11: Findings of Immediate Jeopardy, Actual Harm, and Substandard Quality of Care by Number and Percentage of Receiving SNFs Calendar Years 2004 through 2007**

CY	Immediate Jeopardy			Actual Harm			Substandard Quality of Care		
	Number Issued	Number of Receiving Facilities <sup>1</sup>	Recipients as a Percentage of Total SNFs	Number Issued	Number of Receiving Facilities <sup>1</sup>	Recipients as a Percentage of Total SNFs	Number Issued	Number of Receiving Facilities <sup>1</sup>	Recipients as a Percentage of Total SNFs
2004	89	33	3%	373	127	10%	89	34	3%
2005	97	39	3%	443	162	13%	90	40	3%
2006	128	56	5%	784	232	19%	150	51	4%
2007	110	45	4%	606	198	16%	129	44	4%

<sup>1</sup> Individual facilities can receive two or more deficiencies of these types in any year.

Figure 7:

COMPARISON OF COUNTS OF COMPLAINTS TO COUNTS OF STATE CITATIONS ISSUED DURING CALENDAR YEARS 2001 through 2007

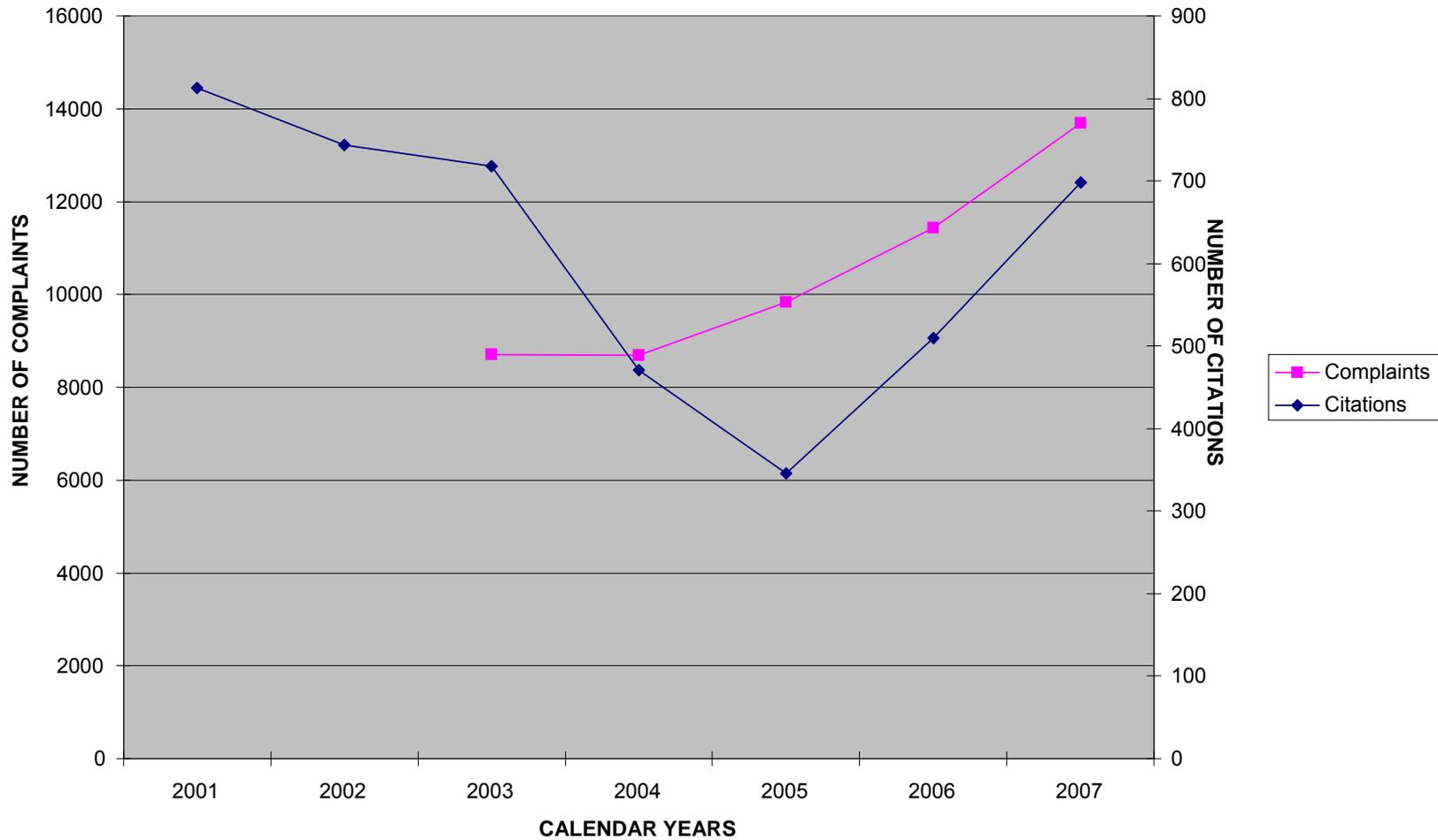


Figure 8:

**COMPARISON OF STATE CITATIONS PER RECIPIENT FACILITIES  
CALENDAR YEARS 2001 through 2007**

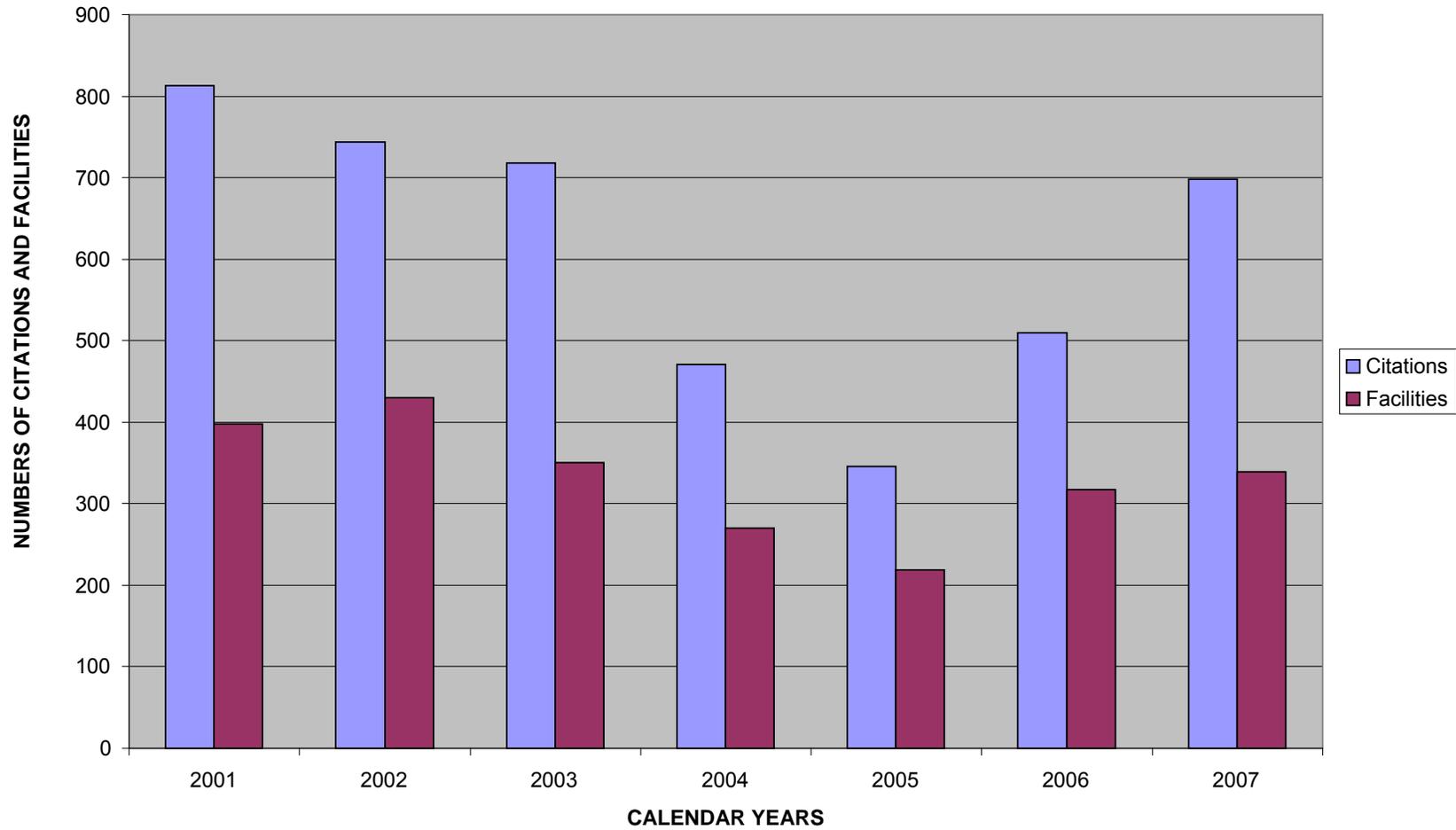
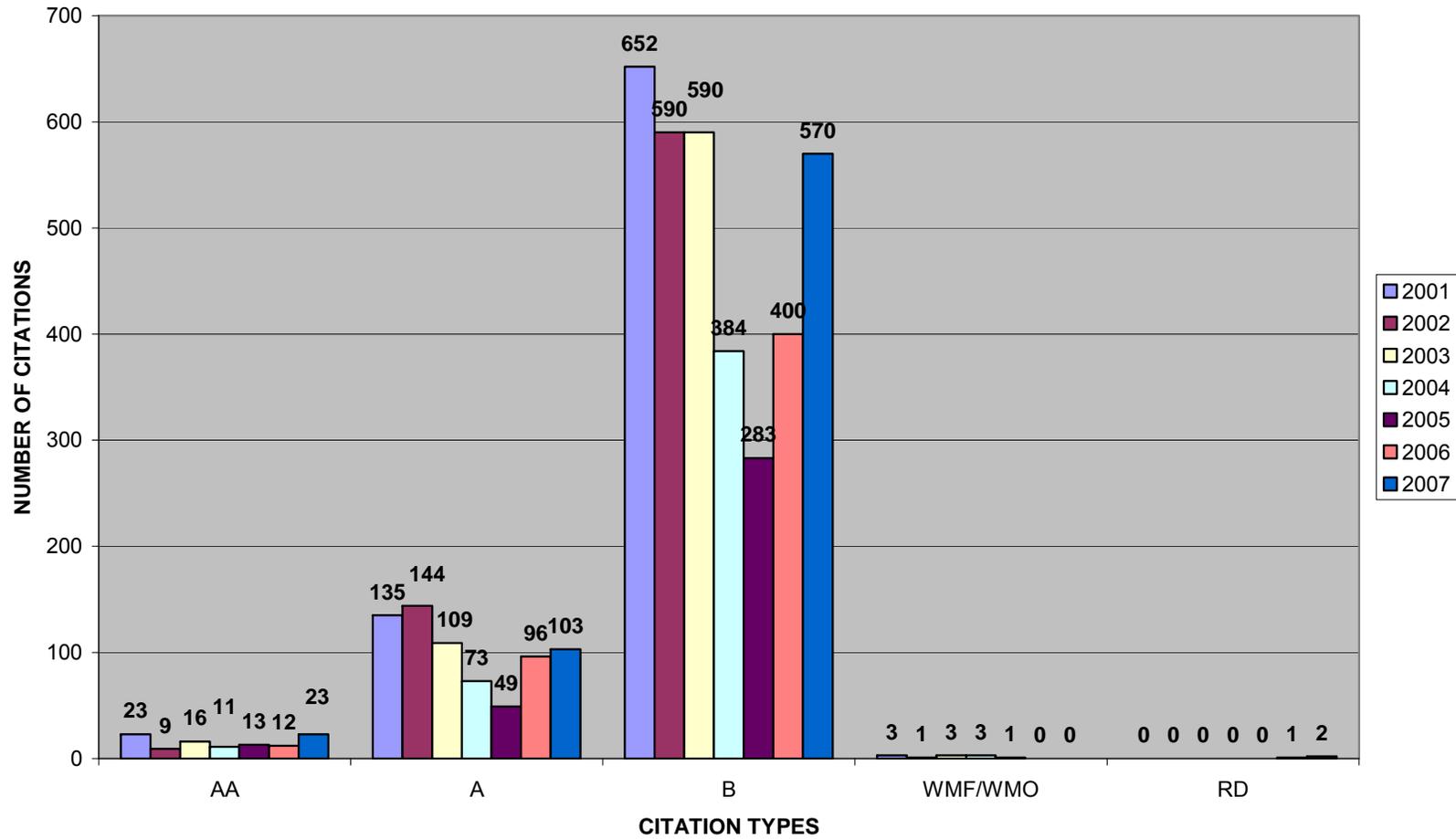


Figure 9

CITATIONS ISSUED ANNUALLY  
CY 2001-2007



## **Part 4: Residents who Express a Preference to Return to the Community**

### **I. INTRODUCTION**

Welfare and Institutions Code §14126.033 (AB 1629, Frommer, Chaptered 875, Statutes of 2004) requires the Department of Public Health, Licensing and Certification to report on the extent to which residents who express a preference to return to the community, as provided in Section 1418.81 of the Health and Safety Code, have been able to return to the community.

This analysis shows that about half of the residents expressing a desire to return to the community were discharged to the community within a year of admission. Moreover, it shows that cumulatively 60 percent of those admitted in 2005 and 64 percent of those admitted in 2006 were discharged to home or to a lesser level of care by May of 2008.

### **II. STUDY METHODS**

The analysis was designed to determine the extent to which SNF residents admitted in calendar years 2005 and 2006 who expressed a desire to return to the community were discharged to home or a lesser level of care during and following their admission year.

#### **The MDS Data:**

California's Medicare and/or Medicaid certified skilled nursing facilities are required by federal mandate to assess the functional capability of, and formulate an individual care plan for, all residents in their care. The Minimum Data Set is the tool used for assessment and care-plan development purposes. Upon admission, varying types of assessments are completed for all residents regardless of length of stay. For example, residents who stay less than fifteen days may only be required to undergo a partial assessment. However, residents staying longer than fifteen days are required to undergo a more extensive assessment. The residents with lengths of stay exceeding fifteen days are largely the ones who are asked to express their preference to return to the community. Full assessments are conducted at minimum on an annual basis. Additionally, limited assessments are conducted quarterly, and full assessments periodically within the year depending upon the residents' health condition. The national Centers for Medicare and Medicaid Services (CMS) database is the repository for MDS data. The Center for Medicare and Medicaid Services receives electronic transmissions of the data from each nursing home via their respective States. In accordance with a CMS data use agreement, the CDPH L&C, Research and Forecasting Unit has indirect access to detailed MDS data extractions.

#### **The Study Population:**

The study population included a sample of residents with:

- Affirmative responses to the MDS question regarding their preference for living in a community setting;
- First-time admission dates to the SNF in calendar years 2005 or 2006;
- Final discharge dates occurring during calendar years 2005 through 2008; and
- Discharge destinations to home or a lesser level of care.

## **Data Collection:**

This subsequent analysis was conducted using MDS detailed data selected from elements of the MDS assessment instrument and extracted from the national federal repository. Each resident was uniquely identified by an MDS resident identification number automatically assigned by the MDS system. Admission dates were collected from MDS Section AB. *Date of Entry* (See Table 12). Residents wanting to transition to the community were identified by their discharge preference communicated in Section Q1a. *Discharge Potential and Overall Status* (See Table 13). Section A3a. *Assessment Reference Date* was used in conjunction with Section Q1a to identify the residents' first indication of preferring community life (See Table 14). Additionally, discharge data for the residents were gathered from Section R3a. *Assessment/Discharge Information* from the MDS Discharge Tracking Form (See Table 15). "Home or Lesser Level of Care" was defined using the following three items: 1. Private Home / Apartment without Home Health Services, 2. Private Home / Apartment with Home Health Services, and 3. Board and Care / Assisted Living as listed in Section R3a. *Assessment/Discharge Information*. The data extractions consisted of separate Microsoft Access databases for admissions for calendar years 2005 and 2006 and discharges for calendar years 2005 through May 2008.

The data were purged of records representing multiple admissions and discharges for the same resident and analyzed on the basis of each resident's first assessment date in either 2005 or 2006 and last discharge date in the year first discharged. These criteria were chosen in order to capture the residents' earliest indication of a preference to return to the community and to capture discharge dates for residents whose return was not anticipated.

Data collection and analysis methods included in the following assumptions:

- The discharge preference captured by using the first assessment date would most likely yield the highest number of residents preferring to transition to the community.
- Discharge data from Section AA8a6. *Identification Information-Discharged-return not anticipated*. This section is used for residents who did not return to the SNF.

Limitations to the study findings include the exclusion of:

- *Health condition as a determinant for discharge potential*. Cognitive and physical health characteristics were not considered.
- *Proxy Responses*. Consideration was given to all responses to Section Q whether or not given directly by the resident or by the resident's proxy.

**The following are outside of the scope of the study; however, knowledge of them lends strength to the reliability of the study's findings:**

- *Extremely short-stay residents who are not required to express a discharge preference*. Some residents who stayed at a SNF less than two weeks were not necessarily given a full Admission Assessment. Only residents that have a full Admission Assessment are asked the question of whether they prefer to return to

the community. If such residents had been included, total SNF admissions and discharges would increase.

- *Residents admitted prior to calendar year 2005 and discharged during calendar year 2005 through May 2008.* Similar to the aforementioned residents, these residents increase the overall discharge rates that may be used in comparing the study findings with alternate sources of data in order to gauge the validity of the study. For example, in order to compare the MDS data in the study for home health care services with Office of Statewide Health Planning and Development (OSHPD) home health care data, it is useful to know how many residents were discharged to home with home health services during calendar year 2006 regardless of when the resident was admitted into the SNF.

### **III. RESULTS**

The main result of this analysis is that 60 percent or more of the residents who were admitted to a California SNF during calendar years 2005 and 2006 and who had a preference for home or community living were discharged to home or a lesser level of care by 2008.

Many Californians are admitted to skilled nursing facilities for long-term care services. A proportion of this admitted population expresses a desire to transition to community settings. In this study, for calendar year 2005 this proportion is 88,153 or 69 percent of 127,509 admitted residents who were asked their preference. Similarly, for calendar year 2006, this proportion is 107,570 or 72 percent of 148,946 admitted residents were asked their preference (See Table 16). Out of the groupings of 88,153 in 2005 and 107,570 in 2006 are those identified who actually transitioned to home or a lesser level of care during the time of the study (See Figures 10 and 11, calendar years 2005 and 2006 respectively).

For calendar year 2005, among the 88,153 residents expressing a preference for home or community living, 40 percent (approximately 35,000) were discharged to home or a lesser level of care during that same year and 60 percent (approximately 50,000) were discharged to home or a lesser level of care by May of calendar year 2008. The majority of those returning to a community setting were discharged to a private home or apartment with home health services (See Figure 12).

Similarly for calendar year 2006, among the 107,570 residents expressing a preference for home or community living, 48 percent (approximately 51,000) were discharged to home or a lesser level of care during that same year and 64 percent (approximately 69,000) were discharged to home or a lesser level of care by May of calendar year 2008 (See Table 16). The majority of those returning to a community setting were discharged to a private home or apartment with home health services (See Figure 13).

**TABLES**

**Table 12: Section AB. Demographic Information**

1. Date of Entry	<p>Date the stay began. Note-Does not include readmission if record was closed at time of temporary discharge to hospital, etc. In such cases, use prior admission date.</p> <p>XX – XX - XXXX</p> <p>Month – Day – Year</p>
------------------	--

**Table 13: Section Q. Discharge Potential and Overall Status**

<p>Q1a: Resident Expresses/Indicates Preference to Return to the Community</p> <p>0 No 1 Yes</p>
--

**Table 14: Section A. Identification and Background Information**

<b>3. Assessment Reference Date</b>	<p><b>a. Last day of MDS observation period</b></p> <p>XX – XX - XXXX</p> <p>Month – Day – Year</p>
-------------------------------------	---

**Table 15: Section R. Assessment/Disclosure Information**

3. Discharge Status	<p>1. Private Home / Apartment Without Health Home Services</p> <p>2. Private Home / Apartment With Health Home Services</p> <p>3. Board and Care Assisted Living</p> <p>4. Another Nursing Facility</p> <p>5. Acute Care Hospital,</p> <p>6. Psychiatric Hospital, MR / DD Facility</p> <p>7. Rehabilitation Hospital</p> <p>8. Deceased</p> <p>9. Other</p>
4. Discharge Date	<p>Date of Death or Discharge</p> <p>XX – XX - XXXX</p> <p>Month – Day – Year</p>

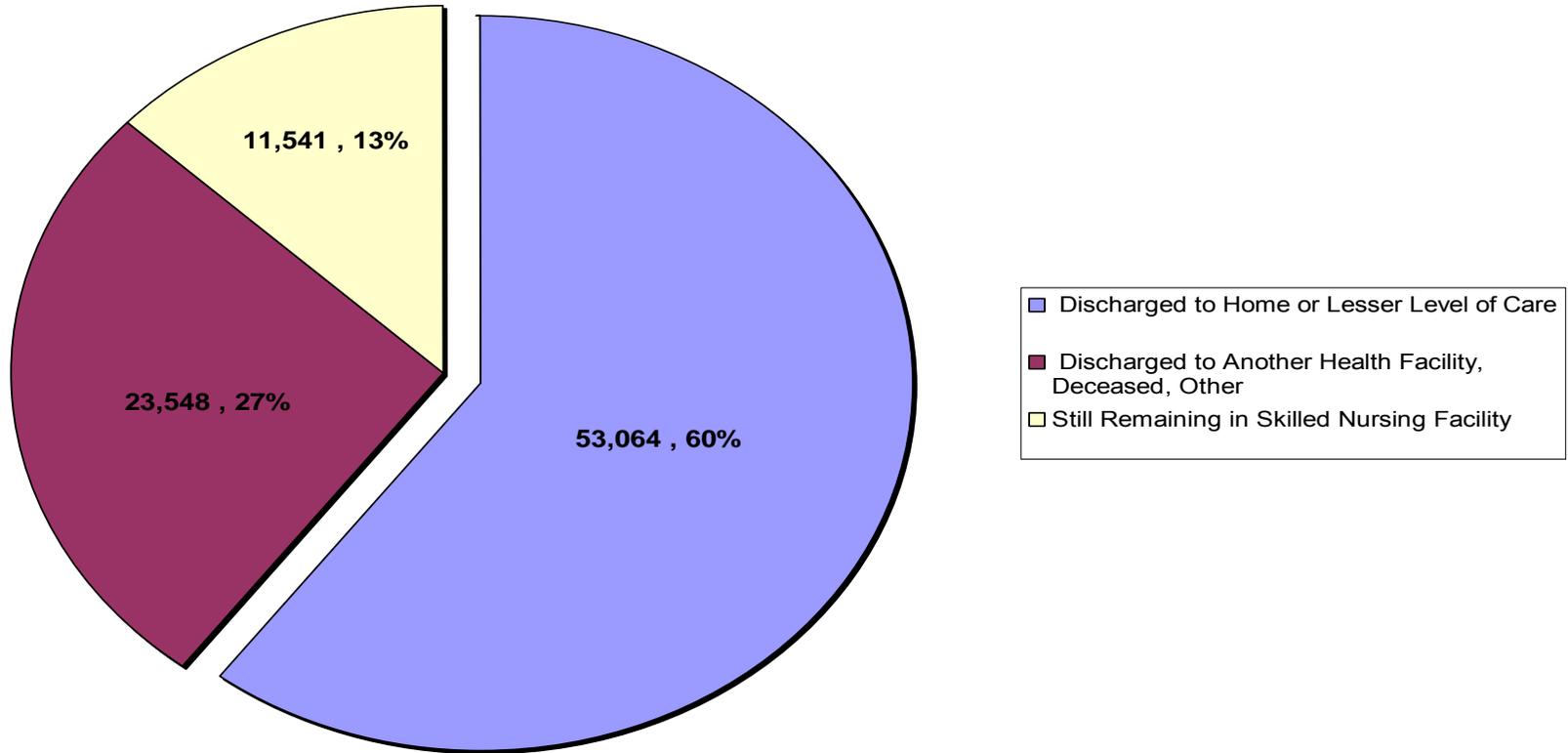
**TABLE16:**

**RESIDENTS WITH PREFERENCE FOR COMMUNITY SETTING DISCHARGED TO HOME OR LESSER LEVEL OF CARE  
ADMISSIONS IN CY 2005 AND 2006 – DISCHARGES DURING CYs 2005 – 2008**

DESCRIPTION			ADMISSION in CY 2005	ADMISSION in CY 2006
	CY 2005	CY 2006	DISCHARGED during 2005-2008	DISCHARGED during 2006-2008
<b>TOTAL ADMISSIONS</b> (For those expressing discharge preference)	127,509	148,946		
Total Residents w/Preference to Return to the Community	<b>88,153</b>	<b>107,570</b>		
Percent of Total Admissions	<b>69%</b>	<b>72%</b>		
<b>DISCHARGE RATES FOR RESIDENTS W/PREFERENCE TO RETURN TO THE COMMUNITY</b>				
<b>Residents Discharged to Home or a Lesser Level of Care</b>				
1. Private Home/Apartment Without Home Health Services	7,555	10,689	11,184	14,105
2. Private Home/Apartment With Home Health Services	22,553	33,567	32,407	43,469
3. Board and Care Assisted Living	5,075	7,423	9,473	11,800
<b>Total</b>	<b>35,183</b>	<b>51,679</b>	<b>53,064</b>	<b>69,374</b>
<b>Percent of Residents Discharged to Home or a Lesser Level of Care</b>	<b>40%</b>	<b>48%</b>	<b>60%</b>	<b>64%</b>

**Figure 10:**

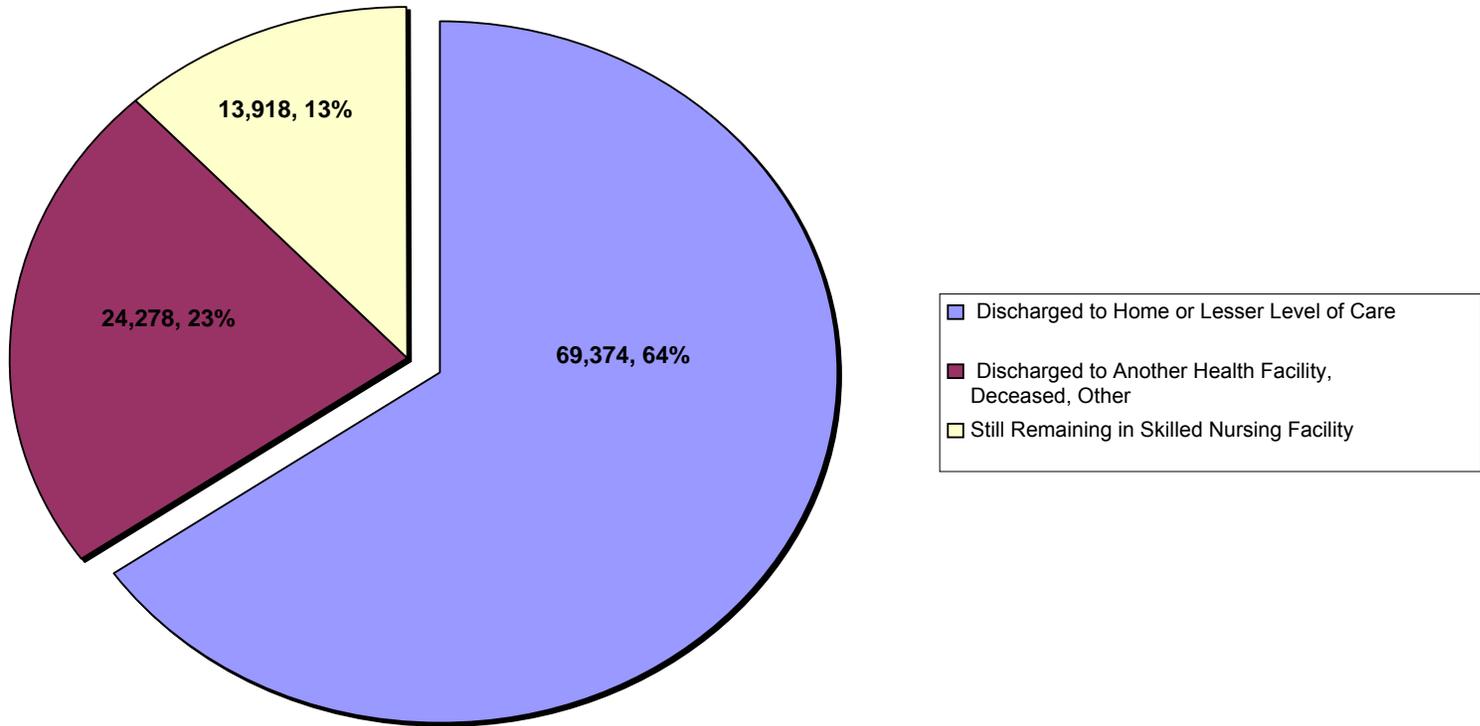
**DISCHARGE STATUS OF RESIDENTS WITH PREFERENCE FOR COMMUNITY  
ADMISSIONS IN CY 2005 and DISCHARGES DURING CYs 2005 - 2008**



**88,153 = 100%**

**Figure 11:**

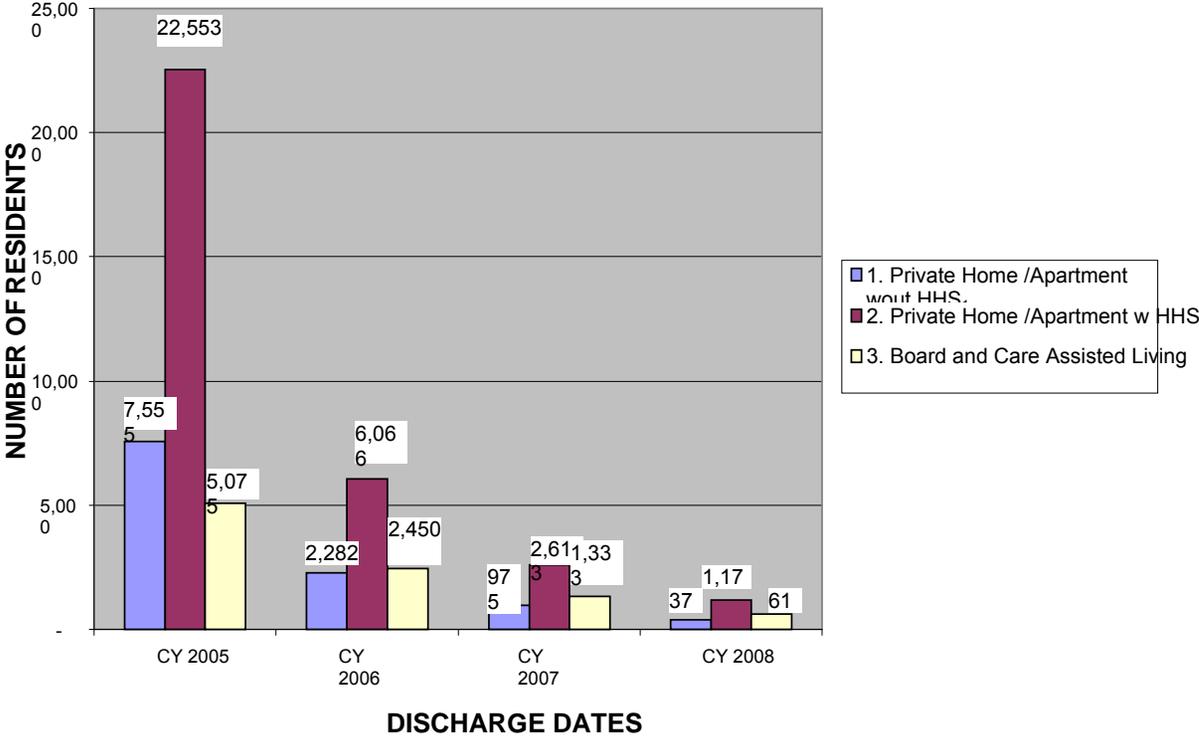
**DISCHARGE STATUS OF RESIDENTS WITH PREFERENCE FOR COMMUNITY  
ADMISSIONS IN CY 2006 and DISCHARGES DURING CYs 2006 - 2008**



**107,570 = 100%**

**Figure 12:**

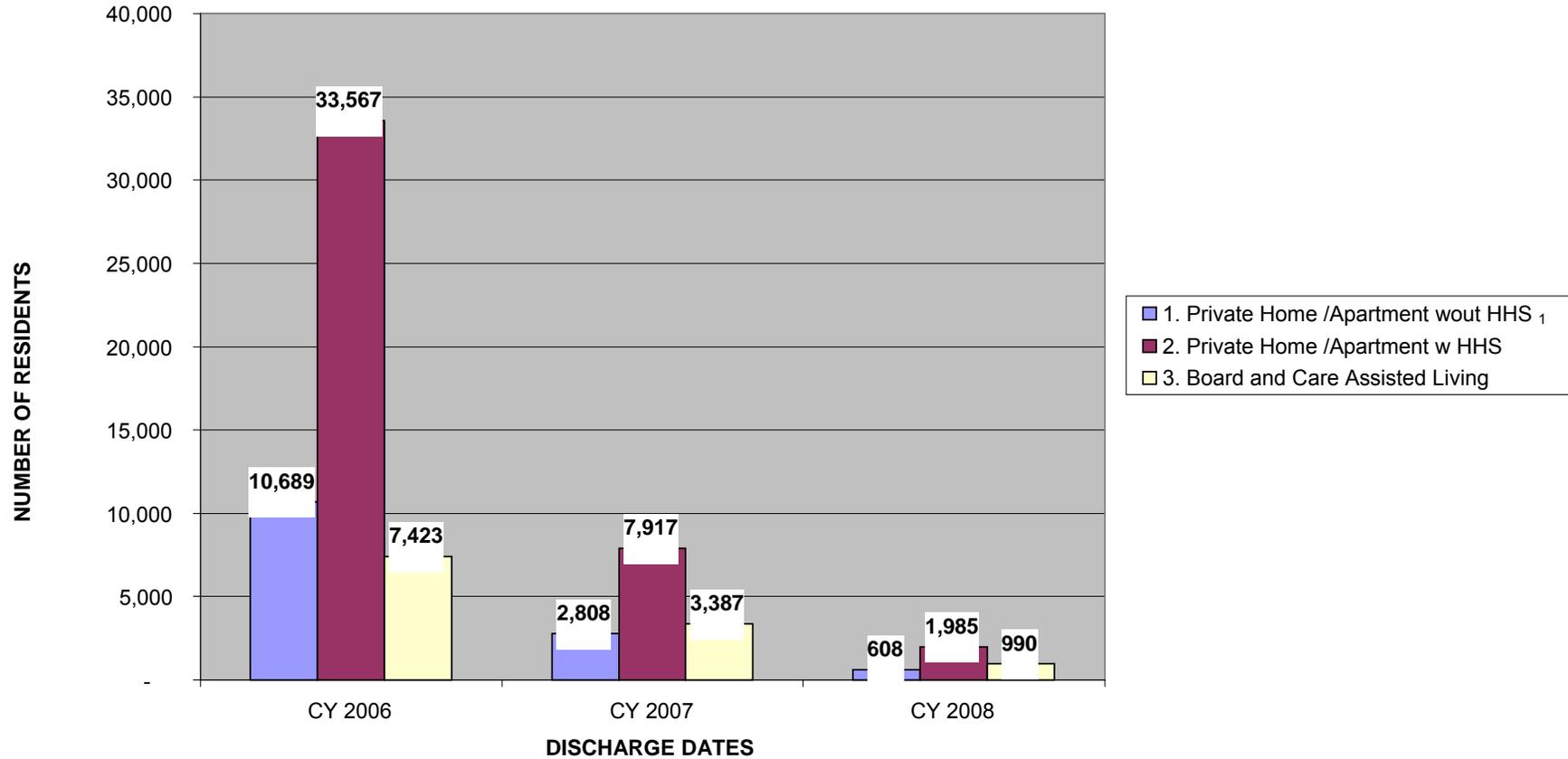
**RESIDENTS WITH PREFERENCE FOR RETURN TO COMMUNITY DISCHARGED TO HOME OR LESSER LEVEL OF CARE ADMISSIONS IN CY 2005 AND DISCHARGES DURING CYs 2005-2008**



**TOTAL DISCHARGES DURING CYs 2005-2008 = 53,064**  
**1 HHS = Home Health Services**

Figure 13:

**RESIDENTS WITH PREFERENCE FOR RETURN TO COMMUNITY DISCHARGED TO HOME OR LESSER LEVEL OF CARE  
ADMISSIONS IN CY 2006 and DISCHARGES DURING CYs 2006 - 2008**



**TOTAL DISCHARGES DURING CYs 2006 – 2008 = 69,374**  
**1 HHS = Home Health Service**

## 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, 2009, 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, 2009, and as of January 1, 2010, is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.



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



SANDRA SHEWRY  
Director

ARNOLD SCHWARZENEGGER  
Governor

January 15, 2007

AFL 07-01

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 Public Health (CDPH) Licensing and Certification program (L&C) will continue the staffing data collection effort begun in June of 2006. Staffing data is being collected to assess the extent to which freestanding skilled nursing facilities (SNFs) comply with the 3.2 nursing hours per patient day staffing ratio mandated by Section 1276.5 of the California Health and Safety Code. To collect the necessary data, CDHS L&C sends staff into SNFs to audit payroll records on-site. The upcoming round of monitoring visits will cover fiscal year 2005-2006 (July 1, 2005 through June 30, 2006). Visits will be unannounced. CDHS L&C will, however, notify providers of the two to three week window during which they can expect a visit. Monitoring visits will 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

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. Exempt facilities will not be visited. Multi-Level Retirement Communities and SNFs that take private-pay-only (non-Medi-Cal and non-Medicare) patients are **not** exempt.

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 FY 2005-2006. 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 of July 1, 2005 through June 30, 2006.

If that information is retained at a location other than your facility, please notify the CDHS L&C contact identified below where the payroll data may be obtained. Notification of offsite records storage must be provided 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. This information should be readily available, as all employers are required to retain payroll information from at least the previous year at either the place of employment or at a central location within the State of California. This requirement can be found in §72533 226(a) of Title 22. The California Labor Code contains a similar requirement in §1174(d).

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.

To report a records location other than a freestanding SNF, or for other inquiries, please contact:

Kamran Adili  
Department of Health Services  
Licensing and Certification  
Research Section  
P.O.Box 997413/ MS 3000  
Sacramento, CA. 95899-7413  
(916) 552-8646

We appreciate your cooperation with this process.

Sincerely,

**Original Signed by Kathleen Billingsley, R.N.**

Kathleen Billingsley, R. N.  
Deputy Director

## Appendix C: 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 D: 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]

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#### 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.