

February 9, 2018

Chelsea Driscoll, Chief  
Policy and Enforcement Branch  
Licensing and Certification Program  
California Department of Public Health  
MS 3203, P.O. Box 997377  
Sacramento, CA 95899-7377

RE: Comments on Draft SB 97 Workforce Shortage Waiver Provisions

Dear Ms. Driscoll:

We are writing to comment on the discussion of the Department's draft workforce shortage waiver provisions at the January 22, 2018 stakeholder meeting.

CANHR's top recommendation on the workforce shortage waiver is to prohibit skilled nursing facilities from admitting new residents while a waiver is in effect. Imposing a ban on admissions serves multiple important goals, including:

- Protecting current and future residents of understaffed nursing homes from neglect;
- Creating strong incentives for understaffed facilities with waivers to come into compliance with staffing requirements;
- Reducing nursing staff turnover in nursing homes that are chronically understaffed.

All of the consumer stakeholder organizations have urged the Department to adopt a ban on admission requirement due to its central importance in protecting residents from exposure to harm. Nursing homes without enough staff are extraordinarily dangerous places to live.

Additionally, we urge the Department to reconsider recommendations we made in our November 30, 2017 letter on the draft workforce shortage waiver provisions. The revised draft presented at the January 22, 2018 stakeholder meeting is not nearly adequate to prevent chronically substandard nursing homes from using the waiver process to circumvent the minimum staffing requirements established by SB 97.

The following are key recommendations we made in our letter and at the January 22, 2018 meeting:

- Do not allow SNFs to obtain waivers based on representations that there is a shortage of RNs;
- Delete the requirement that SNFs use OSHPD data to demonstrate a shortage of RNs;

- Require waiver applicants to submit turnover, retention, salary, benefit, and staffing data for CNAs in its area to help assess whether a legitimate CNA shortage exists;
- Maintain the draft requirement that a SNF's plan on how the facility will meet residents' needs include an assessment of each resident and the direct care staffing resources needed to fully meet resident needs;
- Require a waiver applicant to demonstrate that its direct caregiving staffing levels meet or exceed the current expected staffing level calculated for it by the Centers for Medicare and Medicaid Services (CMS);
- Conduct meaningful onsite investigations for all waiver applications;
- Consult with the facility's resident council, family council, and union representatives in addition to the local ombudsman to get their views on the appropriateness of the waiver, the adequacy of resident care, the existence of a workforce shortage, and the accuracy of the facility's representations;
- Prohibit SNFs that have a history of non-compliance with staffing requirements from obtaining waivers;
- Make waiver denials mandatory, rather than discretionary, for SNFs that are non-compliant with state and federal standards;
- Deny waiver requests and impose citations when SNF waiver applicants submit false information;
- Require a SNF to staff at 3.5 hours per resident each day during the pendency of its waiver application and cite it for any days below 3.5 hours without an approved waiver;
- Reevaluate waivers quarterly and terminate them within one year;
- Require SNFs with approved waivers to submit detailed monthly report on actions to resolve its workforce shortage;
- Inspect for compliance with waivers during every investigation and inspection the Department conducts while the waiver is in effect;
- Terminate waivers immediately if residents are being neglected.

Thank you for considering our recommendations.

Sincerely,



Michael Connors  
Advocate



Patricia McGinnis  
Executive Director