



December 16, 2021

*Supporting People,
Health and
Quality of Life*

Main Office 2201 K
Street
Sacramento, CA 95816-4922
(916) 441-6400
(916) 441-6441 fax

Southern Calif Regional Office:
560 N. Coast Hwy 101, Ste 8
Encinitas, CA 92024

P.O. Box 370
La Jolla, CA 92038-0370

(760) 944-1666
(760) 944-1049 fax

www.cahf.org

Matt Yarwood
Chairman of the Board

Julie Butenko
Vice Chair

Steve Flood
Secretary/Treasurer

Mike Williams
Immediate Past Chair

Craig Cornett
CEO/President

The Honorable Jim Wood
Chair, Assembly Health Committee
State Capitol
Sacramento, CA 95814

SUBJECT: AB 1502 (Muratsuchi) as amended - OPPOSE UNLESS AMENDED

Dear Chairman Wood:

The California Association of Health Facilities wishes to express an **oppose unless amended position on AB 1502 (Muratsuchi)** related to changes of ownership for skilled nursing facilities. AB 1502 would prohibit interim managers referred to as “wrongful operators” from operating a skilled nursing facility and imposes a number of punitive penalties on facilities that do so including criminal penalties, admissions bans, loss of Medi-Cal funding and more. In addition, AB 1502 requires the California Department of Public Health to automatically deny applications for changes of ownership based on a number of factors including but not limited to history of violations, finances, being an interim manager, and filing bankruptcy in the last ten years.

CAHF strongly agrees that the change of ownership or CHOW process for skilled nursing facilities must be reformed. California has the most unworkable and lengthy licensure process in the nation that requires nursing facility ownership transactions and interim managers to occur prior to an application being processed by the Department of Public Health. Nursing facilities did not create this backwards process. It has been perpetuated by the state – and it needs to end.

CAHF is committed to working with you and Assembly Member Muratsuchi to establish a workable, timely and fair process for change of licensure for skilled nursing facilities in California. We are, however, worried about specific provisions in AB 1502. It is crucial that high quality operators with a strong track record of delivering high quality care for residents are allowed to acquire new facilities. Unfortunately, the requirements and disqualifications are so stringent in AB 1502, no skilled nursing facility operators would qualify to operate facilities in the future. In addition, no high-quality operators will risk taking over a troubled facility due to the stringent disqualifications that would be attached to these types of buildings. That is an outcome that could be detrimental to the provision of quality care for our growing senior population for years to come.

As we look to find a workable solution for all those involved we would like to point out the needed changes to AB 1502 as follows:

Stringent disqualifications would eliminate most if not all potential applicants

Skilled nursing facilities are regulated by over thirty federal, state and local entities and are subject to surveys and enforcement by both the California Department of Public Health (CDPH) and Centers for Medicare and Medicaid Services (CMS). Due to double enforcement at the state and local level, it is very possible that facilities could receive two penalties such as an “A” from CDPH and a “G” from CMS or an “IJ” and an “AA” for a single incident and potentially disqualify an entity from being granted a change of ownership for one incident at a facility. This fact reveals a flaw in the current language of AB 1502 which takes away critical discretion from the department to review a facility/operator’s history and make a determination based on the information. The automatic disqualification of applicants who receive two or more AAs in 36 months or 3 or more AA, A or IJs in 5 years ignores the size and scale of nursing home operators and ignores the population of residents that are cared for including residents with behavioral health issues or dementia. CAHF requests that these provisions are modified in the bill to require the Department to consider this compliance history rather than establish these provisions as automatic disqualifiers.

Hold the Department of Public Health accountable to make final CHOW application decisions in the time they are allotted

CDPH’s long processing times for change of ownership applications for skilled nursing facilities create a number of challenges. Interim managers are utilized currently because change of ownership applications take a long time to process and it is essential that there are operators in place to run facilities and maintain quality of care for residents. CAHF strongly disagrees with the extreme penalties imposed on interim managers referred to as “wrongful operators” including criminal penalties, monetary penalties, admission bans and suspension of Medi-Cal payments. In fact, some of these sanctions are so extreme that they could jeopardize quality of care for residents if facilities do not have funding to operate. If the Department accomplishes their required task and finalizes applications in a timely manner there is no such requirement for an interim manager. This should be the goal – accountability for the Department of Public Health first and foremost.

Further, CAHF respectfully requests the following amendments to AB 1502:

Interim Managers

- Change the term “wrongful operator” to “unlicensed operator” throughout the bill. Currently, entities are allowed to operate as interim managers due to the department’s inability to process applications in a timely manner. The current process takes approximately twelve to fourteen months to complete which is the longest change of ownership application timeframe in the country
- If the department is unable to complete the application process for a change of ownership process within 120 days followed by a 60-day extension, then the department shall issue a temporary license to the facility for a period of six months to allow for application to be processed.

Appeals for denials of applications

- If a change of ownership application is denied, there must be a swift appeal process in order to maintain quality of care for residents and stability for staff. CAHF proposes that Health and Safety Code 1269 be amended so that petitions are set for hearing within 30 days and decisions are made within 60 days. In addition, the department must state in writing the reason for the denial with supporting evidence.

Maintaining confidentiality of records

- The confidentiality of contracts and financial documents must be maintained and rather than requiring these documents, the department has the ability to request relevant documents needed to make a determination. Similarly, for application information posted on the CDPH website should be restricted to information that does not require confidentiality.

Requirements and Disqualifications

- In terms of demonstrating an entity's financial ability to operate, the requirement to have a detailed budget for 12 months with 12 months of working capital is too stringent and does not allow the Medicare or Medi-Cal payments that would be received during this time to be considered. As such, CAHF requests alternative language that requires applicants to submit evidence to the department that they have the financial capacity to operate.
- Rather than an applicant be in "full" compliance, require that applicants are in "substantial" compliance with applicable licensure, certification and employment laws and regulations which is a more reasonable standard for applicants to achieve.
- In terms of automatic disqualifications for applicants, more flexibility and discretion are needed for the department to make determinations. Language should be amended to say actions, sanctions and findings "may" rather than "shall" disqualify an applicant including termination for Medicare or Medi-Cal, felony conviction, filed bankruptcy in the last ten years, was a special focus candidate or has demonstrated a pattern of violations within the past 10 years.
- When reviewing violations such as AAs, A or IJs, or legal actions against an applicant, the "final determination" of a violation rather than whether a facility "received" an application must be considered as facilities often appeal these citations. If a citation is overturned or lowered from an AA to an A, this is key information for the department to consider. In addition, as mentioned above due to the dual enforcement system for SNFs, one single incident could result in both a state and federal fine and rather than multiple citations disqualifying an applicant, it would be that one incident makes an applicant ineligible. This needs to be reconsidered and revised to a more reasonable standard.

The Honorable Jim Wood

December 16, 2021

Page 4

Implementation or effective date

- AB 1502 must have a delayed implementation date to 2026 in order to clear out the current change of ownership applications pending with the department and to give prospective applicants appropriate notice to comply with new rules. In addition, CDPH will need time to make changes to its existing systems and hire additional staff.

For the above reasons, CAHF has an oppose unless amended position on AB 1502. The change of ownership process is an important issue that needs significant reform. We thank you in advance for consideration of our concerns and CAHF looks forward to working with you and the committee to find reasonable solutions that streamline and clarify the change of ownership process.

If you have questions or for more information, please contact Jennifer Snyder with Capitol Advocacy at jsnyder@capitoladvocacy.com or (916) 549-7817.

Sincerely,

A handwritten signature in black ink that reads "Craig Cornett". The signature is written in a cursive style with a long horizontal stroke at the end.

Craig Cornett
CEO/President