



CALIFORNIA ADVOCATES FOR NURSING HOME REFORM

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December 22, 2021

Assemblymember Jim Wood, Chair
Assembly Health Committee
State Capitol, Room 6005
Sacramento, CA 95814

Sent via email to Lara.Flynn@asm.ca.gov

Re: CANHR Response to CAHF's 12/16/21 AB 1502 Oppose Unless Amended Letter

Dear Chairperson Wood:

California Advocates for Nursing Home Reform (CANHR), the sponsors of AB 1502, recently received a copy of CAHF's Oppose Unless Amended letter. We would like to respond to some of CAHF's claims and each of its "needed changes."

Collectively, CAHF's recommendations would give CDPH the discretion to approve nursing home licensure applications from owners who have subjected residents to extreme neglect and abuse. Instead of the scandalous current change of ownership system, which permits unfit, unapproved operators to operate nursing homes for years without a license, CAHF proposes an even worse system that would expeditiously grant licenses to those same operators. In other words, CAHF proposes to set AB 1502 on its head.

CAHF claim: Nursing facilities did not create the backward process "that requires nursing facility ownership transactions and interim managers to occur prior to an application being processed by [CDPH]."

The current nursing home change of ownership system that enables zombie licenses is not described in statute, regulations, or CDPH policy. Rather, it is an invention of nursing home operators who have exploited statutory loopholes and CDPH inaction. The bad actors CAHF represents have been the direct beneficiaries of a system that allows them to buy up and take over nursing homes first and seek approval later. Critically, CAHF has never taken any action to fix the "most unworkable and lengthy licensure process in the nation" (a claim made without any supporting evidence). CDPH's horribly inadequate change of ownership system has worked to the advantage of CAHF's membership, who are able to take over facilities with no say from CDPH or even over its express rejection.

CAHF claim: 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.

AB 1502 ensures that ONLY reasonably qualified operators are able to take over nursing homes.

CAHF claim: The requirements and disqualifications in AB 1502 are so stringent that “no skilled nursing facility operators would qualify to operate facilities in the future.”

AB 1502’s suitability requirement is eminently reasonable. An applicant must establish that it has the character, abilities, education, experience, performance history, financial resources, and other necessary qualifications to operate the facility in full compliance with all applicable statutes and regulations. CAHF would have us believe that the \$12 billion-a-year California nursing home industry does not have a single operator that meets this modest test. The Committee should ask CAHF to provide an actual example of a high-quality operator who would fail AB 1502’s suitability standard.

CAHF recommendation #1: CAHF requests that the disqualifying provisions in the bill are modified to require CDPH to merely consider them rather than use them as automatic disqualifiers.

This misguided recommendation would upend AB 1502’s most critical provision, which bars unfit operators from acquiring more nursing homes if their facilities have been subject to extreme sanctions, such as a license revocation. Even if an operator with significant “size and scale” had a compliance history of extreme sanctions, AB 1502 would not put them out of business – it would simply suspend any expansion plans they may have. CAHF’s suggestion would greenlight the disgraced CDPH to allow California nursing home operators with terrible track records to expand their operations and subject even larger numbers of California’s most vulnerable citizens to neglect, exploitation, abuse, suffering, misery and tortuous deaths. AB 1502 is meant to remove California as a safe harbor for terrible nursing home operators. Instead, CAHF wants to throw them a life preserver.

CAHF recommendation #2: Change the term “wrongful operator” to “unlicensed operator.”

CAHF objects to the term “wrongful,” contending that owners are using interim managers due to CDPH’s inability to process applications in a timely manner. CAHF’s excuse that the current process takes a long time is beside the point. AB 1502’s purpose is to stop owners and operators from taking over nursing homes without prior approval from CDPH. Whatever validity CAHF’s excuse did or did not have in the past doesn’t matter after AB 1502’s reforms take effect, when it will be perfectly appropriate and necessary to stigmatize the misconduct of owners who ignore the statutory “stop sign.”

CAHF recommendation #3: Require the Department to issue a temporary license to the facility for a period of six months if the Department is unable to complete the application process within 120 days followed by a 60-day extension.

This provision would allow nursing home operators to take licenses by default and gives them perverse incentives to sabotage timely application determinations by CDPH. Operators will no longer merely operate nursing homes without approval while their change of ownership applications are pending; instead, they will have a statutory imprimatur to run facilities without approval. In doing so, it will make a very bad situation even worse.

Licenses are required for many forms of individual and business activity to protect the health and welfare of Californians. Doctors would not dream of a system that allowed them to practice medicine by default because the state regulatory agency failed to timely act on their application. Licenses should reflect approval by the state rather than an applicant's ability to successfully run out the clock. Permitting unapproved entities to run nursing homes is a well-known recipe for severely jeopardizing the health and welfare of fragile and disabled adults.

CAHF's proposed system would create a new set of nightmares, with no safe way to evict dangerously unfit operators at the end of the "temporary" license period. If nothing else, nursing home slumlords in California have demonstrated that there is nothing "temporary" about their takeover schemes and that replacing them is far beyond the ability of CDPH.

CAHF recommendation #4: Provide swift appeals for denied applications by amending HSC §1269 so that petitions are set for hearing within 30 days and decisions are made within 60 days.

There is no reason for treating the purchase of a nursing home as a crisis event that entitles anyone, much less an applicant that the state has determined to be unfit, to have priority for administrative hearings and decisions over all other parties who have appeals before the state. Nursing home residents are harmed, not helped, by the constant buying and selling of facilities before and after nursing home chains have bled them dry. It is time to stop rewarding nursing home chains for diverting public funds and manufacturing financial crises that put residents in harm's way.

California nursing home owners can fairly be described as wards of the state, with almost all of their \$12 billion in annual revenues coming from public sources. It is most reasonable to expect them to continue operating a nursing home safely until they have completed a sale to an operator who has been approved and granted a license by the state.

CAHF recommendation #5: Maintain the confidentiality of contracts and financial documents and shift the burden to the Department to request them.

Nursing home residents are very poorly served by California's secretive, insular change of ownership system that puts operators' business interests far above their own. AB 1502 would replace this system with one that is far more open and transparent. To achieve that purpose, all documents that are submitted by applicants to establish their suitability and qualifications must be made available to the public. Operators who are funded almost solely by taxpayers should expect no less when voluntarily seeking licenses from the state to serve such a vulnerable population.

CAHF recommendation #6: Replace the requirement that an applicant demonstrate its financial capacity through submission of a detailed budget for 12 months with a general requirement that applicants submit evidence to the Department that they have the financial capacity to operate.

Financial fitness is of growing importance because chain operators sometimes sell their facilities to entities that are certain to fail due to lack of financial resources. AB 1502's provision on financial fitness is modeled on a recent Kansas statute¹ that was triggered by the extraordinary chaos that ensued following the collapse of Skyline Healthcare, a small chain that acquired over 100 nursing homes in at least ten states seemingly overnight.² CAHF's recommendation is a step backward from current law and would diminish CDPH's ability to make sound judgments on an applicant's financial fitness.

CAHF recommendation #7: Replace the requirement that an applicant be in “full” compliance with one that requires applicants to be in “substantial” compliance with applicable licensure and certification requirements.

Changing the expectation from “full” to “substantial” compliance would nullify the purpose of this requirement because virtually all federally certified nursing homes are routinely deemed to be in substantial compliance no matter how terrible their performance histories. Otherwise, under federal regulations, their Medicare certification must be terminated. This is due to a federal enforcement regulation at 42 CFR § 488.450, which provides that CMS will terminate the provider agreement of the Medicare SNF “if the facility does not achieve substantial compliance” within 6 months of a finding of noncompliance.

The term “substantial compliance” is not an indicator of actual compliance; rather, it is used in a way to periodically reset a nursing home's compliance clock so that it remains eligible for payments from Medicare and Medi-Cal. Thus, even nursing homes like Windsor Redding Care Center and [Northpointe Healthcare Centre](#) that have been in the news recently for severe neglect have been periodically deemed to be in substantial compliance. If CAHF's recommendation were adopted, CDPH performance history reviews of ownership applicants could be substantially weakened by this change.

CAHF recommendation #8: Amend language to say actions, sanctions and findings “may” rather than “shall” disqualify an applicant.

We do not want to have an ownership approval process where operators with extremely poor track records are rewarded with a license to expand their operations. As we stated in response to CAHF's first recommendation, the law needs to stop, not enable, operators with a record of extremely poor care to expand their operations and provide care to even more nursing home residents.

CAHF recommendation #9: 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

¹ The Kansas City Star, [Kansas Cracks Down on Nursing Home Operators with Shaky Finances](#), April 23, 2019. [Breaking news](#) on the Skyline case was just reported on December 20, 2021.

² NBC News Investigation: [Nursing home chain collapses amid allegations of unpaid bills, poor care](#), July 19, 2019; Laura Strickler, Stephanie Gosk and Shelby Hanssen, [A nursing home chain grows too fast and collapses, and elderly and disabled residents pay the price](#), NBC Nightly News, May 19, 2019.

facility “received an application” must be considered as facilities often appeal these citations.

California nursing home operators have exhaustive appeal rights and annually file hundreds of lawsuits and appeals seeking to subvert enforcement of care standards.³ While it is appropriate for CDPH to consider appeal determinations when evaluating an operator’s track record, it is not acceptable to dismiss enforcement actions merely because an operator has filed an appeal that is pending. Doing so would create perverse incentives to tie up CDPH in court.

CAHF recommendation #10: Delay the effective date of AB 1502 to 2026 to give the Department time to change its systems and hire additional staff.

This delay tactic is highly inappropriate. Stalling AB 1502 implementation for four years will enable unscrupulous operators to continue buying up California nursing homes, while putting the lives of everyone who lives in them at risk.

Delay is also unnecessary. The only hiring CDPH needs to do to implement AB 1502 is to bring on someone who is an expert on California’s nursing home chains and their track records. It can and should do this immediately. This leader can train existing staff to implement AB 1502.

Through its groundbreaking 2014 series on nursing home chains, the Sacramento Bee demonstrated that two reporters were able to review and rate all of California’s major nursing home chains in a matter of months, with none of the resources at CDPH’s command.⁴ It would be far easier for CDPH to conduct this type of analysis as it directly holds the performance histories of California nursing home operators.

CAHF’s hyperbolic, sky-is-falling, argument falls in line with decades of its prior opposition to systemic nursing home reform efforts in the legislature. AB 1502 installs reasonable minimums for nursing home operator qualifications and ensures that no one takes over operations without gaining state approval first. The sky for meaningful ownership vetting fell long ago and residents have suffered immensely ever since. California has a nursing home licensing system where licenses are optional and suitability does not matter. It is long past time for meaningful reform. CAHF’s recommendations would undermine such reform.

³ As CalMatters reported on December 6, 2021, nursing homes often challenge state citations because the state is not particularly enthusiastic about defending them. [From maggots to sex abuse, nursing homes sue California to overturn citations, fines](#)

⁴ Unmasked: How California’s Largest Nursing Home Chains Perform, Sacramento Bee, November 8-10, 2014, [Part 1: Unmasked: How California’s Nursing Homes Perform](#), November 8, 2014, [Part 2: Unmasked: Who Owns California Nursing Homes?](#), November 9, 2014, [Part 3: Unmasked: California falls short in disclosing nursing-home ownership](#), November 10, 2014.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Anthony Chicotel". The signature is written in a cursive, flowing style.

Anthony Chicotel
Senior Staff Attorney