

December 4, 2017

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VIA EMAIL (CHCQStakeholderFourm@cdph.ca.gov) AND U.S MAIL

RE: November 17, 2017 Stakeholder Meeting Regarding SB 97 Implementation and Workforce Shortage Waiver for Skilled Nursing Facilities

The California Association of Health Facilities (CAHF) was invited to participate in a stakeholder meeting on November 17, 2017 to discuss draft workforce shortage waiver provisions. As a follow-up to that meeting and in addition to comments and concerns we shared at the meeting, we would like to formally submit the following questions and comments:

What guidelines should be considered when determining a waiver application?

As stated in previous meetings and written comments, CAHF would support waiver provisions that are broad enough, reasonable and fair in order to achieve the intent of SB 97. CAHF does not believe there is a black and white definition for “workforce shortage,” but rather there are various reasonable and broad factors that would inform the Department of Public Health of a valid challenge in finding and retaining a specific workforce mix. The guidelines and criteria which would support a decision for granting a waiver should be factors in the discretionary determination; not absolute elements. Additionally, how the Department currently calculates 3.2 nursing hours per patient day (nhppd) should remain the same for the increase to 3.5 direct care hours and the 2.4 certified nursing assistance minimum required hours. Reconfiguring this calculation to stricter standards at this time would be unattainable for more facilities than currently estimated, and significantly more expensive to the state.

In addition to the draft workforce shortage waiver guidelines proposed by the Department, we suggest adding a few other factors. First, we recommend expanding current nursing data generated by the Office of Statewide Health Planning and Development (OSHPD), to include certified nursing assistant (CNA) shortage information. In addition, the OSHPD data should be specific to skilled nursing facilities (SNFs) to better capture the demand for employees specifically for long term care. For example, there may not be an RN or CNA shortage for acute care hospitals in a given area because of the higher wages and benefits, but there may very well be a shortage for SNFs. Second, CAHF recommends considering the geographic location of a SNF because underserved metropolitan areas can equally struggle to find staff as rural areas do and to find enough qualified and full-time staff depending on

market and wage demands. And third, the Department should consider how many active CNA and RN training programs there are in close proximity to the skilled nursing facility who is requesting a waiver.

Some stakeholder participants brought up the availability of nurse registries to mitigate the need or granting of a waiver. As stated in previous meetings and comment, CAHF strongly disagrees, and conversely believes the required use of a nurse registry to supply the required minimum staffing hours explicitly shows the need for a waiver. Pulling staff from a nurse registry is not a beneficial, desirable or long-term fix to workforce needs. There is a significant issue with the challenges stemming from utilizing registries throughout the state. The personnel that comes from these registries are only temporary, and they are not familiar with the residents. Moreover, registry staff is significantly more expensive than full-time employee staff. Not only are their hourly wages much higher, there are often additional costs for their travel time, meal per diem and lodging. Staffing registries are meant to be a temporary patch, not a permanent or ideal solution.

What should happen when a waiver is being determined, and what is a reasonable amount of time for a waiver?

When a facility has applied for a waiver, or is in the process of producing material and support for that waiver, they should not be subjected to penalties and citations. A facility waiver should be submitted and decided within a certain time period before any potential enforcement takes place. For example, there would be a window to submit the application, a deadline for the application to be approved or denied, and then a clear timeframe when enforcement would take place based on the waiver being approved or denied.

We appreciate the Department's draft waiver provisions which allow for up to three consecutive waiver approvals. The nursing workforce shortage in California is not an over-night, or over-year fix. This shortage has been an ongoing issue, and has intensified with the new SNF staffing mandate. It is more than finding, recruiting and training nearly 2,000 new employees. There will also need to be certain incentives and other benefits in place to assist nursing facilities in keeping the large number of new employees, and making the mandate practical and sustainable – all of which is primarily funded by the Medi-Cal program. This new nursing facility staffing mandate is more prescriptive than 3.2 and something that several hundred SNFs are not accustomed to. It will take time to tailor operations accordingly. It will take a considerable amount of time for SNFs to respond and provide appropriate care that is in the best interest of the residents and community.

Should a facility - which has significant staff turnover, or has some citations - be excluded from consideration for a waiver?

No, they should not be excluded solely based on a particular fault or enforcement factor. As state earlier, the waiver criteria needs to be reasonable, broad and in the residents' and state's best interest. Staff turnover does not necessarily reflect the care in a given facility. Many great facilities have high turnover from any combination of factors such as a CNA being trained at a SNF and they are subsequently recruited to a higher paying job at a nearby hospital or in-home care agency. Regional issues also place a strain on retaining staff due to higher wages in competing job markets. It is projected that increasing statewide and local minimum wage requirements over the next several years will only make SNF overall staff turnover worse and CNA jobs less attractive. Lastly, staff turnover may demonstrate a nursing facility's struggle with finding quality nursing staff in their community.

Attempting to qualify certain penalties or citations for explicitly denying a waiver is not in the best interest of the residents or the state. Many great facilities receive certain citations and penalties throughout their operation with some citations being issued 2-4 years after the occurrence. Also, a facility's citation record may have little to no correlation to their workforce challenges in their area. Enforcing an explicit denial based on a citation record could have an adverse impact on SNF bed supply and availability of long term care services in rural and underserved areas of the state.

If the Department has any follow-up questions, we are more than happy to assist and provide feedback. We appreciate and look forward to the continued dialogue on the workforce shortage waiver provisions.

Sincerely,

A handwritten signature in black ink, appearing to read 'MR', with a long, sweeping horizontal flourish extending to the right.

Matt Robinson, Director of Legislative Affairs