

Assembly California Legislature

Background

Joint Oversight Hearing
Assembly Committee on Health and
Assembly Committee on Aging and Long-Term Care
**California Department of Public Health:
What Progress is Being Made to Improve Nursing Home Oversight?**
Tuesday, March 24, 2015
State Capitol, Room 4202
1:30 pm to 4:30 pm

Purpose of the hearing

The California Department of Public Health (DPH) is responsible for the regulatory oversight of long-term health care facilities, commonly referred to as nursing homes, to ensure safe, effective, and quality health care for nursing home patients. In recent years, DPH has been the subject of ongoing scrutiny by the Legislature, the federal government, stakeholders, and the media due to persistent problems that have resulted in inconsistent and inadequate oversight of California's nursing homes. In January 2014, the Assembly Health and Aging and Long-Term Care Committees held a joint oversight hearing to evaluate DPH's performance with regard to nursing home oversight and identify needed reforms.

The purpose of this oversight hearing is to see if DPH has made progress to improve nursing home oversight, and to ensure that the department adheres to an appropriate plan and timeline for reforming and improving its oversight program while addressing the immediate needs of nursing home residents.

Background

Many older and/or disabled individuals will find themselves in need of long-term care at some point in their lives. Long-term care refers to a broad range of services that support individuals who are limited in their ability to care for themselves due to a physical, cognitive, or chronic health condition that is expected to continue for an extended period of time. Long-term care services can be provided in a variety of settings, including in one's home, in the community, in residential settings, or in institutional settings such as nursing homes.

In California, nursing homes provide services to individuals who are either temporarily or permanently unable to care for themselves, but who do not require care in an acute setting. There are a variety of types of nursing homes in California, including skilled nursing facilities (SNF), intermediate care facilities/developmentally disabled, and congregate living health facilities. SNFs are one of the most common types of nursing homes, and are defined in state law as facilities that provide skilled nursing and supportive care to patients on an extended basis. In addition to skilled nursing, SNFs are required to provide various services to patients on an extended basis, including physician, dietary, pharmaceutical, and activity services.

Nursing homes are generally freestanding, though some are operated within a hospital or residential care community. A typical stay in a nursing home is less than three months for over 75% of the resident population. Just over 7% of residents remain in the facility for one year or more. Two out of three nursing home residents are women.

DPH Licensing and Certification (L&C) Program

DPH's L&C Program, housed within the department's Center for Health Care Quality, is DPH's largest program and is responsible for the regulatory oversight of over 7,500 licensed health care facilities including hospitals and nursing homes. Of these facilities, approximately 2,500 are long-term health care facilities, and of those, 1,263 of them are SNFs. Additionally, the federal Centers for Medicare and Medicaid Services (CMS) contracts with L&C to evaluate facilities accepting payments from Medicare and Medi-Cal, the state's Medicaid program, to ensure that they meet federal requirements.

The L&C Program evaluates health care facilities for compliance with both state and federal laws and regulations through a variety of required tasks, including initial and re-licensure surveys, federal certification surveys, and investigations of complaints and entity-reported incidents (ERIs), which are incidents facilities are required to self-report, including events such as epidemic outbreaks, poisonings, fires, major accidents, or other unusual occurrences which may threaten the welfare, safety, or health of patients, personnel, or visitors. L&C is also responsible for issuing citations and deficiencies and assessing of administrative penalties.

L&C has a field operations branch that oversees 15 district offices, which are divided between five geographic areas throughout the state. The majority of the L&C Program's licensing, certification, and enforcement activities are performed by health facility evaluator nurses (HFEN). HFENs must be licensed as a registered nurse, and must undergo extensive training through a state academy overseen by L&C in order to properly perform L&C duties and ensure uniform application and enforcement of state and federal laws and rules and regulations pertaining to patient care. It takes approximately 12 to 14 months for HFENs to complete the training necessary to become proficient and work independently. Additionally, DPH indicates that HFEN personnel have historically been difficult to recruit and hire due to the state's inability to compete with private sector pay and due to delays in the hiring process.

The L&C Program's Professional Certifications Branch (PCB) also certifies nurse assistants (a key classification of nursing home employees), home health aides, and hemodialysis technicians. The PCB is responsible for investigating complaints against certified nurse assistants (CNAs) and the other health professionals it certifies and for enforcing disciplinary action against those individuals.

Finally, rather than directly performing L&C activities in Los Angeles (LA) County, DPH contracts with LA County's Department of Public Health, Health Facilities Investigation Division to perform these activities on its behalf. Pursuant to this contract, county staff are responsible for performing the same L&C activities that would otherwise be performed by state L&C staff, for approximately 385 nursing homes operating within the county. This contracting arrangement has been in place for decades. In July 2012, the contract was renewed for a three-year period with an annual budget of \$26.9 million to fund 178 positions to support five LA County field offices. The contract is set to expire at the end of June 2015.

Complaint and ERI investigations

Investigation of complaints and ERIs are carried out pursuant to both federal and state mandates. Current state law sets forth timeframes for specified L&C activities with regard to complaints. Specifically, upon receipt of a complaint, DPH is required to make an onsite inspection or investigation within 10 working days. If the complaint is an immediate jeopardy complaint, meaning that it involves a threat of imminent danger of death or serious bodily harm, DPH is required to make an onsite inspection or investigation within 24 hours. However, current state law does not specify the length of time required to complete complaint and ERI investigations.

In April 2014, DPH reported the department had a total of approximately 11,000 open cases. Then again reported that as of December 2014, the total grew to 12,814 open cases (including LA County cases) – 11,838 facility complaints and ERIs, and 976 complaints against PCB-certified personnel.

According to data provided by LA County Department of Public Health, as of March 2014, there were 2,654 nursing home complaints/ERIs in a backlog. By December 2014, the number of backlogged complaints/ERIs increased to 4,836. The county reports that within that time period, it received 2794 complaints/ERIs and completed 612 investigations.

Longstanding problems and concerns with the L&C Program

Longstanding concerns and complaints about the L&C program have persisted for many years. In 2006, the Legislative Analyst's Office reported that California's nursing home oversight system suffered from serious weaknesses, citing reports that only one-half of all complaints not classified as immediate jeopardy were investigated within the 10-day timeframe required under federal law. Further, in 2007, the California State Auditor issued a report finding that the Department of Health Services (now referred to as DPH) struggled to initiate and close

complaint investigations and communicate with complainants in a timely manner, failed to correctly prioritize complaints, and understated the severity of certain deficient practices at SNFs.

In July 2012, CMS sent a letter to DPH expressing concern with the ability of the department to meet many of its L&C responsibilities. In the letter, CMS stated that L&C was not adequately meeting federal survey and certification workload requirements. CMS set benchmarks for DPH to attain and requires quarterly updates from DPH on its work plans and progress to meet the benchmarks. The state was in jeopardy of losing \$1 million in federal funds if certain benchmarks are not met. Ultimately, \$138,123 in federal funding was withheld.

In March 2014, concerns came to light regarding DPH's oversight of its contract with LA County after an investigative reporter uncovered evidence that the county had an unofficial policy to close certain nursing home complaints without fully investigating them. As a result, DPH performed a review of the county's compliance with state and federal complaint investigation requirements, directed the county to cease its unsanctioned policy of case closures without proper investigation. The LA County Board of Supervisors requested an audit by the LA County Department of Auditor-Controller. The LA County Auditor released two audit reports, concluding in part that the county had a significant workload backlog and lacked a mechanism to effectively track and manage its workload. Additionally, the LA County Auditor found that LA County supervisors downgraded deficiencies and citations recommended by surveyors without discussing the changes with the surveyors or documenting their justification. The LA County Auditor also found that complaints and ERIs were not always prioritized in accordance with state guidelines, resulting in delays in initiating investigations.

In April 2014, CMS informed DPH that the state was in jeopardy of losing federal funding if, in part, certain performance and management benchmarks regarding L&C's oversight of the LA County contract are not met, including installing a temporary management monitoring team to assist and oversee the implementation of programmatic and administrative improvement. Ultimately, \$251,515 in federal funding was withheld.

In August 2014, DPH published the findings of a comprehensive assessment of the L&C program that was performed per a 2012 request from CMS. DPH contracted with a private contractor, Hubbert Systems Consulting, to perform the assessment. In summary, the assessment found numerous deficiencies within the L&C program, including:

- Leadership, strategic planning, performance measurement and management, organizational structure;
- Timeliness of facility surveys, investigation closures, and issuance of citations;
- Oversight of DPH's contract with LA County;

- Staff timekeeping systems, HFEN recruitment and retention, training, hiring, and employee morale; and,
- Standardization of survey and investigation processes, data collection, internal/external communications.

Hubbert Systems Consulting set forth 21 recommendations to remediate the deficiencies identified in its assessment, including recommendations to building stronger leadership; develop a strategic plan; create change management; restructure L&C; establish performance indicators, improve hiring and promotion processes, develop a HFEN recruitment strategy, improve training, and implement a program for ongoing training and staff development; expand stakeholder engagement; improve oversight of LA County workload and management; improve the L&C IT infrastructure; and, update regulations, policies, and procedures.

According to DPH, the department agrees with all 21 recommendations in the assessment, and has developed a work plan to implement them. DPH states that it will take approximately two years to fully implement all of the recommendations.

In October 2014, the State Auditor released another report regarding the L&C program and ineffective management of nursing home complaint investigations. The key findings of that report were:

- As of April 2014, there were more than 11,000 open complaints and ERIs backlogged, many of which had relatively high priorities, and had remained open for an average of nearly a year;
- L&C's oversight of complaint processing has been inadequate with no system to track open complaints;
- Despite backlogs and lengthy investigations, L&C does not have any policies or procedures to ensure prompt completion of complaint/ERI investigations and in many cases did not meet statutory timeframes for initiating complaint investigations;
- There were inconsistencies among district offices in the handling of complaints, and in some cases, complaints were closed without supervisory review or closed inappropriately. Additionally, there was a high degree of variance across district offices with regard to the prioritization of ERIs with some district offices performing many more onsite investigations than others, while other offices close ERIs and categorize them as needing no action;
- None of the district offices reviewed consistently ensured timely receipt of corrective action plans from facilities that were notified of deficient practices;
- There was no staffing analysis for any of its district offices to determine how much staff is needed to complete workload. Most of the L&C district offices visited by audit staff

reported not having the resources needed to investigate complaints properly, and having to work overtime in order to try to keep pace with workload; and,

- DPH failed to report all statutorily required information to the Legislature in certain years by omitting information related to the timeliness of complaint investigations in 2012 and 2013 reports to the Legislature.

The State Auditor made numerous recommendations to DPH. Among them, that the department implement a formal process to monitor and track open complaints; establish timeframes to complete complaints and ERI investigations; provide district offices with guidance for efficient and consistent processing of ERIs; ensure that district offices have the necessary resources to process complaints properly and that they perform proper investigations; and, increase monitoring of district offices to ensure they comply with laws and policies and initiate investigations within required timeframes.

DPH agrees with many of the State Auditor's recommendations. However, one notable exception is with regard to timeframes for investigations. DPH states that it is committed to respond to complaints/ERIs in a timely manner, but will not establish specific timeframes for investigations. Rather, DPH states it will use recently published performance metrics to promote staff accountability without compromising the quality and thoroughness of the work, and that these performance metrics can be used as an appropriate management tool.

Governor's budget proposal

Historically, DPH has had challenges in determining the appropriate amount of staff and resources needed to meet L&C workload demands. In the 2014-15 budget year, DPH indicated that its methodology to assess workload demands and needs was flawed. For example, in 2013-14, DPH estimated that it needed 122 more L&C staff. However, in 2014-15, L&C estimated that it would need 70 less staff, despite workload backlogs. Further, for each of the last two years, rather than increasing facility licensing fees which are used to fund and support L&C activities. L&C refunded health facilities over \$11 million in fees.

For this budget year, DPH reports that it has changed its methodology to assess L&C workload demands. As such, the Governor's budget for 2015-16 proposes to provide for 237 new L&C positions and increase expenditure authority to reduce complaint/ERI volume, and decrease investigation time. Despite these new positions, DPH estimates that it will take four years to complete current pending investigation workload while keeping up with new workload and avoiding backlogs.

The Governor's budget also includes \$2 million in special funds to support the implementation of the quality improvement recommendations made by Hubbert Systems Consulting, \$378,000 in special funds to improve oversight of its LA County contract, and \$9.5 million in special funds to fill currently contracted positions in LA County, and to provide for 32 new positions to address

aging and current high-priority nursing home complaints/ERIs. Finally, DPH proposes to increase nursing home licensing fees by 20%.

Conclusion

Nursing home residents are among our most vulnerable populations and the state has an obligation to protect their health and safety. With problems plaguing the department for many years now, DPH's L&C Program must improve. The department has made a commitment to reform its L&C Program through improving leadership, strategic planning, measuring performance, enhancing its workforce, and improving operations. This commitment is an encouraging starting point to making much needed changes. However, given its history, it is fair to question DPH's ability and capacity to exact these reforms with effectiveness and timeliness that will not further disrupt its performance of L&C duties. Reforming L&C will take time and resources, and DPH must move forward deliberately and effectively prioritize changes in order to have the most meaningful impact for nursing home residents. It must also ensure that it does not fall behind on its current duties as it aims for reform so that the complaints of today do not become the backlog of tomorrow.