

OCTOBER 5, 2021

CDPH's Licensing and Certification of SNFs

PRESENTED TO:

Assembly Committee on Health
Hon. Jim Wood, Chair



LEGISLATIVE ANALYST'S OFFICE

Order of Presentation

- ▶ **Overview of the California Department of Public Health's (CDPH's) Licensing and Certification (L&C) Program**
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Overview of CDPH's L&C Program

- CDPH oversees L&C of certain health facilities, totaling more than 11,000 statewide and including general acute care hospitals, home health agencies, hospices, and SNFs. The program is administered by CDPH in 14 regional districts, including Los Angeles County. CDPH contracts with Los Angeles County (Department of Public Health) to perform most L&C functions for health facilities in that county.
- L&C provides the following benefits to a health facility applicant:
 - A state license allows a health facility to operate in California.
 - CDPH contracts with the Centers for Medicare and Medicaid Services (CMS) to certify facilities on behalf of CMS. Federal certification allows a health facility to receive Medicare and Medi-Cal reimbursements.
- In addition to reviewing applications from health facilities for L&C and conducting associated inspections, the L&C Program has an important enforcement role that includes investigation of complaints and facility-reported incidents (FRI).
- L&C's Professional Certification Branch administers certification of certified nurse assistants, home health aides, hemodialysis technicians, and nursing home administrators, including investigation of complaints against these caregivers.



Key L&C Program Statutory Responsibilities and Required Time Lines Related to SNFs

The L&C Program has five main sets of responsibilities that are relevant to the L&C of California’s more than 1,200 SNFs, as described below. (These requirements also apply to the L&C of other long-term care facilities. In some cases, they also apply to the L&C of other types of health facilities.)

- **Reviewing SNF L&C Applications and License Updates.** The L&C Program (through its Centralized Applications Branch) reviews license applications and any change that requires an updated license—such as changes of ownership, location, number of beds, service, and name—or other changes that must be reported to CDPH.
- **Conducting SNF Inspections.** After initial processing, applications approved for initial licensure or changes to the license move to the relevant district office for an on-site inspection, or “survey.” The L&C Program also conducts periodic unannounced inspections to ensure compliance with state and federal laws and regulations, including compliance with staffing ratios mandated by Chapter 52 of 2017 (SB 97, Committee on Budget and Fiscal Review).
 - For new license applications, the L&C Program may issue provisional licenses, good for six months. The program must conduct a full inspection near the end of the six months and do one of the following: issue a regular license, extend the provisional license for six months if facility is making substantial progress in meeting licensing requirements, or not issue a regular license if substantial progress is not being made.
 - Under state law, unannounced inspections of SNFs must take place at least once every two years and annually if the facility has had a serious violation in the past 12 months. Federal regulations require unannounced inspections at least every 15 months; the statewide average must be every 12 months or less. Compliance with state and federal standards can be determined in the same inspection.



Key L&C Program Statutory Responsibilities and Required Time Lines Related to SNFs

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- **Conducting Investigations.** The L&C Program investigates complaints and FRIs, such as accidents, disease outbreaks, patient abuse or neglect, unsafe conditions, and medication errors. In addition, the L&C Program's Medical Breach Enforcement Section investigates breaches of patients' medical information.
 - CDPH has ten working days to make an on-site investigation or inspection in response to a complaint. In cases of immediate jeopardy (those in which alleged noncompliance with rules has caused, or is likely to cause, serious injury, harm, impairment, or death to a patient), CDPH has 24 hours. CDPH must complete complaint investigations within 60 days, with the possibility of one 60-day extension.
- **Enforcement.** If in the course of conducting an inspection or investigation CDPH determines a SNF is in violation of state or federal rules, CDPH must issue a notice to correct the violation and issue a citation. Citations may include enforcement actions (federally referred to as remedies) such as civil penalties, license suspension, termination of certification, appointment of a temporary manager, denial of payment, or transfer of residents.
 - CDPH has 24 hours to issue a notice to correct the violation(s) and of its intent to cite the SNF upon determining that a SNF is in violation of state or federal rules.
 - State citations must be issued within 30 days of the completed investigation. However, if CDPH intends to impose a federal enforcement remedy, the Statement of Deficiencies must be delivered within ten working days of exiting the inspection and the facility must send back its plan of correction ten calendar days later.



Key L&C Program Statutory Responsibilities and Required Time Lines Related to SNFs

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- **Reporting.** CDPH is required to:
 - Submit a report to the Legislature annually on state and federal enforcement activities along with any recommendations for additional legislation to improve the effectiveness of the enforcement system or enhance the quality of care at long-term care facilities.
 - Publish an annual fee report each February with proposed health facility licensing fees for the upcoming fiscal year. These fees help pay for the L&C Program.
 - Submit a report to the Legislature annually, with L&C Program performance metrics and estimates of costs, workload, and proposed health facility fees.
 - Publish quarterly metrics online about the volume, timeliness of initiation, timeliness of completion, and disposition of:
 - Investigation of facility complaints and FRIs.
 - Investigation of paraprofessionals.
 - Relicensing and re-certification inspections.
 - L&C Program vacancy rates and hiring.



L&C Program Budget Augmentations Since 2014-15

The Appendix to this handout includes a table that summarizes the legislatively approved budget augmentations that CDPH has received from 2014-15 through 2021-22 intended to improve the timeliness and quality of the work performed by the L&C Program. Since 2014-15, \$147.8 million ongoing and 532.6 positions have been added to the L&C Program. The total budget for the L&C Program is \$394 million and includes 1,465.3 authorized positions.

Highlights from this budget history include:

- In response to legislative concerns, CDPH contracted with Hubbert Systems Consulting in 2014 for a gap analysis in the L&C Program and has since been implementing recommendations from that report.
- CDPH received funding to increase the number of L&C positions, most significantly in 2015-16 and 2020-21, including for Health Facility Evaluator Nurse (HFEN) surveyor staff.
- CDPH received funding and approval for positions to make quality improvements in processes, recruiting, training, information technology systems, and dashboards. In addition, the 2014-15 budget required additional online reporting by CDPH of performance metrics.
- As required by the 2014-15 budget, CDPH conducted a pilot program to determine whether non-nurse L&C staff could conduct investigations of medical breaches. Previously, HFENs at district field offices conducted this workload. The 2021-22 budget included funding and positions for the Medical Breach Enforcement Section to centralize this workload and maximize the use of non-HFEN staff.
- The 2017-18 budget required SNFs to enhance staff-to-patient ratios, requiring 3.5 hours of direct care per day for each resident (up from 3.2) with 2.4 of those hours filled by certified nurse assistants (CNAs). It required CDPH to develop regulations and processes by which a facility could request a waiver to these rules. CDPH has since received funding to support its review and approval of CNA training programs.



L&C Program Budget Augmentations Since 2014-15

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- In 2019-20, CDPH received approval to execute a new contract with Los Angeles County (for the work performed by the county on CDPH's behalf), which includes performance benchmarks and associated incentive payments.
- In 2020-21, CDPH received approval for permanent positions to expand and centralize the work of its Policy Enforcement Branch, which responds to requests from field offices on how to interpret statute, regulations, and policies. This aids surveyors in identifying deficiencies and applying appropriate enforcement actions in a consistent manner. Chapter 650 of 1998 (AB 1133) required establishment of a centralized unit to provide such technical assistance, but positions were never funded until 2020-21.

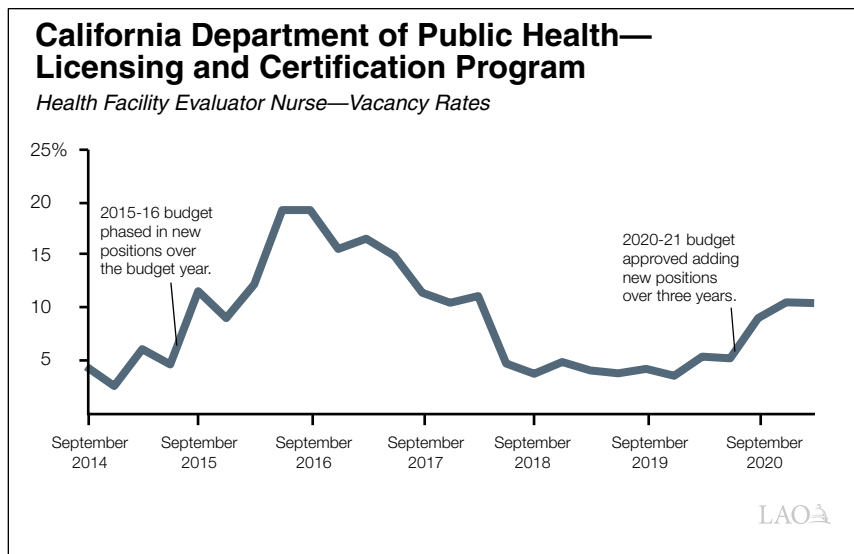


Staffing Levels and Vacancy Rates of Nurse Surveyors

Inspections and investigations of health facilities are led by HFENs.

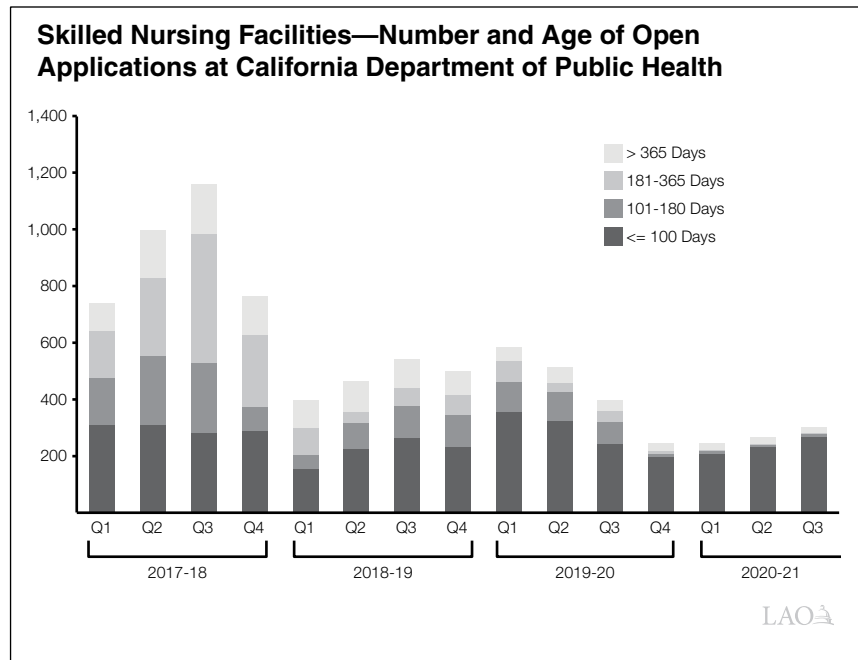
HFENs Spend Much of Their Time on SNF-Related Work. About 70 percent of L&C field operations staff are surveyors/inspectors, the majority of whom are HFENs (603 of 1,004 field office positions). HFENs are trained to evaluate all types of licensed health facilities and currently spend an average of 44 percent of their time on SNF-related work.

Hiring and Retaining HFENs Has Been an Ongoing Challenge. CDPH has indicated over time that turnover in this position is high and upon hire, training can take up to 12 months. In 2015, CDPH engaged contractors to develop strategies for, and assist with, recruitment, training, and retention of HFENs. The figure below shows that the HFEN vacancy rate—after peaking at 19.5 percent in June of 2016 (this peak was due in large part to the addition of authorized positions in the 2015-16 budget)—reached a low of 3.6 percent in 2019 as a result of the concerted efforts to fill positions. It began climbing again, however, with the recent addition of new positions and the onset of coronavirus disease 2019 (COVID-19), which CDPH indicates led to increased retirements and HFEN departures.



Current L&C Program Performance at SNFs

Centralized Application Processing. Applications (for initial license or other changes to the license) often require two steps: (1) processing the application itself and (2) conducting a survey to approve the license or license change. In 2015-16, CDPH centralized the work associated with the first step—processing of health facility applications. (Previously, field offices handled this step as well as any subsequent required surveys.) Significant delays resulted, however, as CDPH indicates it had underestimated the workload associated with processing applications. In 2018, CDPH used existing and blanket authority to address the accumulating workload by hiring temporary positions. The 2020-21 budget provided funding and authority to make these 43 positions permanent. Significant delays have been reduced as a result of the temporary, now permanent, positions at CDPH’s central branch. For example, the figure below shows that both the number of open SNF applications and the length of processing time has improved since 2017-18. Still, this process can be time consuming. For example, the median age of pending change-of-ownership applications as of March was around nine months (and this is only the first step in this case).



Current L&C Program Performance at SNFs

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Field Office Surveys. Field office staff, led by HFENs, complete the second step associated with applications (if the application requires a survey). The COVID-19 pandemic has affected the ability of surveyors to complete these surveys. At the end of March 2021, there were 32 completed SNF applications awaiting a survey with a median age of 342 days. By comparison, at the end of September 2019, there were just five SNF applications awaiting a survey with a median age of 45 days. As of March 2021, pending licensure surveys for changes in ownership (following completion of the application) had a median age of 306 days, meaning a change in ownership could take more than a year and a half from start to finish.

Complaint and FRI Investigations. By law, complaint investigations must be initiated within ten working days (or within 24 hours in the case of immediate jeopardy). Chapter 18 of 2015 (SB 75, Committee on Budget and Fiscal Review) established time lines by which long-term health care facility complaint investigations had to then be completed.

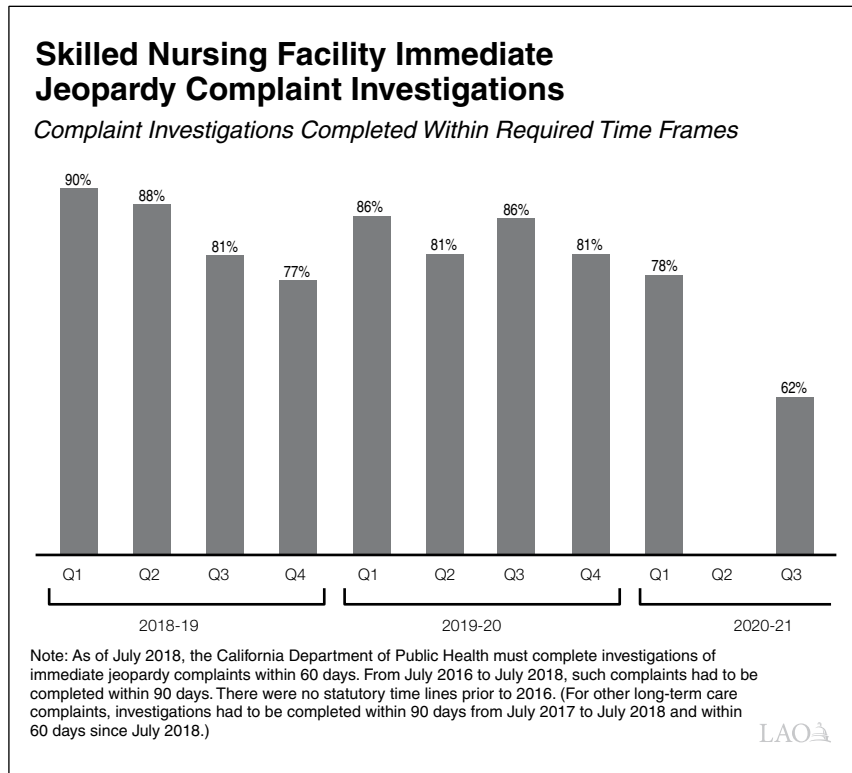
- For immediate jeopardy complaints received between July 2016 and July 2018, investigations had to be completed within 90 days.
- For other complaints, investigations had to be completed within 90 days from July 2017 to July 2018.
- For all complaints received as of July 2018 onwards, investigations have to be completed within 60 days.

The figure on the next page shows that CDPH has not met the new 60-day deadline for immediate jeopardy investigations in at least 10 percent of cases since the deadline took effect in July of 2018, and completion times became notably worse during the pandemic. (CDPH notes that shifting workload priorities since the onset of COVID-19, such as infection control, have affected investigation completion times). As of March 2021, there were 5,542 open complaints against SNFs, 693 of which were considered immediate jeopardy.



Current L&C Program Performance at SNFs

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Enforcement Actions. While statute does not specify a specific time frame for issuing civil penalties, legislative intent language calls for a citation system that can impose “prompt and effective civil sanctions” when violations of state or federal rules have been substantiated. Yet, from January 2017 through June 2021, CDPH took, on average, 240 days to issue 2,245 civil penalties against SNFs that were the result of the more serious of violation types. In more than 10 percent of cases, CDPH took more than a year to do so (in 2 percent of cases, CDPH took more than three years to issue the penalty). Facilities also have the option to appeal the penalty, which they did in 45 percent of cases, further extending the ultimate time line. With such delays, payment of penalties can be especially complicated if a SNF changes ownership hands. This is particularly true if there is also a delay in processing the application to change owners.



Issues for Legislative Consideration

Despite numerous changes made to improve CDPH's L&C Program, significant challenges still remain. In addition, COVID-19 revealed long-standing issues in SNFs as residents experienced disproportionate levels of COVID-19 cases and deaths, highlighting the importance of monitoring quality of care and patient safety. COVID-19 also affected CDPH's ability to conduct its oversight. Not only were on-site visits more difficult, but surveyors had to prioritize infection prevention and control at the expense of other compliance monitoring. In addition, COVID-19 led to more HFEN vacancies than previously expected. According to its website's most recent data, CDPH has not yet been able to take advantage of funding and authority provided in 2020-21 for new HFEN positions. We raise several questions below for the Legislature to consider asking of the administration.

- What permanent changes in L&C oversight of SNFs should be considered as a result of the pandemic? For example, L&C staff were required to provide extensive infection control training and monitoring at SNFs as COVID-19 case rates spiked at SNFs. Should any such statutory changes be considered going forward? In addition, have any other lessons been learned from the COVID-19 experience that should be applied to L&C oversight of SNFs?
- What additional technology improvements could help L&C reduce the number and age of open complaints and FRIs and application processing and licensure survey times and potentially improve the consistency and quality of these processes and surveys?
- What has been the effect of centralizing application processing, medical breach investigations, and policy interpretation? Has it helped improve L&C of SNFs? Has it led to any unintended consequences in SNF oversight?
- How does CDPH intend to address the challenges associated with the recruitment and retention of HFEN staff, as such have been exacerbated by the pandemic?
- How does CDPH intend to address the number and age of SNF applications awaiting licensure surveys?
- What steps could CDPH take to reduce the time between the occurrence of a violation and issuance of a penalty?



Appendix: Recent Budget Actions in the Licensing and Certification Program

Budget Act	Description	Total Augmentation	Total Positions
2014-15	<p>Provided funding for:</p> <ul style="list-style-type: none"> • Investigation of complaints against LTC professionals (18 limited-term positions and \$1.9 million for two years). <p>Required CDPH to report quarterly metrics online about the volume, timeliness of initiation, timeliness of completion, and disposition of:</p> <ul style="list-style-type: none"> • Investigation of facility complaints and FRIs. • Investigation of certified professionals. • Relicensing and re-certification. • L&C vacancy rates and hiring. 	\$1.9 million in 2014-15 and 2015-16	18 two-year, limited-term positions
2015-16	<p>Provided funding for:</p> <ul style="list-style-type: none"> • L&C workload (237 positions phased in and \$19.8 million in 2015-16 and \$30.4 million in 2016-17 and ongoing). • Quality improvement projects (\$2 million one time). • Los Angeles County contract increase (\$14.8 million ongoing) and oversight by CDPH (three positions and \$378,000 ongoing). <p>Established time lines for completing complaint investigations (phased in—by July 1, 2018 all within 60 days).</p>	<ul style="list-style-type: none"> • \$37 million in 2015-16 • \$47.6 million in 2016-17 and ongoing 	240 positions
2016-17	<p>Provided funding for:</p> <ul style="list-style-type: none"> • Quality improvement contracts—redesign of IT systems: Centralized Applications, Health Facilities Consumer Information System (\$2 million one time). • Conversion of 18 limited-term positions to permanent and two new positions to investigate complaints against LTC professionals (\$2.5 million ongoing). • Long-Term Care Ombudsman Program (\$1 million one time). • Los Angeles County contract salary and benefits updates (\$2.1 million ongoing). 	\$7.6 million ongoing	20 positions
2017-18	<p>Provided funding for:</p> <ul style="list-style-type: none"> • Quality improvement projects and contracts (\$2 million in each of 2017-18, 2018-19, and 2019-20). • Los Angeles County contract salary updates (\$1.1 million ongoing). • Healthcare-Associated Infections program (six positions and \$991,000 ongoing). <p>Established SNF staffing requirements to begin July 1, 2018: 3.5 direct care hours per patient per day, 2.4 of these with a CNA.</p>	<ul style="list-style-type: none"> • \$4.1 million in 2017-18, 2018-19, and 2019-20 • \$2.1 million in 2020-21 and ongoing 	6 positions
2018-19	<p>Provided funding for:</p> <ul style="list-style-type: none"> • Los Angeles County contract one-year extension (\$2.6 million ongoing). • Positions for core operations, quality improvement projects, Professional Certification Branch, and reviewing SNF staffing waiver requests (22 positions and \$2.7 million ongoing). <p>Authorized supplemental fee on health facilities in Los Angeles to offset county contract costs above statewide average costs.</p>	\$5.3 million ongoing	22 positions

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Appendix: Recent Budget Actions in the Licensing and Certification Program

(Continued)

Budget Act	Description	Total Augmentation	Total Positions
2019-20	<p>Provided funding for:</p> <ul style="list-style-type: none"> • New Los Angeles County contract with pay-for-performance incentives (\$17.2 million in 2019-20, \$38.2 million in 2020-21, \$57.3 million in 2021-22 and ongoing). • Shifting review of applications for program flexibilities from district offices to centralized unit (six positions and \$973,000 ongoing). • Processing applications for online and distance learning CNA programs (nine positions and \$1.2 million ongoing). • Processing hospital licensing applications pursuant to new statutory deadlines (21 positions and \$3.4 million ongoing). • Provide IT support to surveyors using new federal technology (six positions and \$911,000 ongoing). • Soliciting long-term care quality improvement project proposals (one position and \$680,000 in 2019-20, \$431,000 in 2020-21, and \$149,000 in 2021-22 and ongoing). 	<ul style="list-style-type: none"> • \$24.4 million in 2019-20 • \$45.1 million in 2020-21 • \$63.9 million in 2021-22 and ongoing 	43 positions
2020-21	<p>Provided funding for:</p> <ul style="list-style-type: none"> • L&C workload (20 positions and \$2.7 million in 2021-22, 60 positions and \$8.1 million in 2021-22, and 115.6 positions and \$16.2 million in 2022-23 and ongoing). • Detection and containment of antimicrobial resistant and high concern pathogens at health care facilities (two positions and \$424,000 ongoing). • Federally approved projects to benefit SNF residents (\$6 million in each of 2020-21, 2021-22, and 2022-23). • Quality improvement projects and contracts (\$3 million in each of 2020-21, 2021-22, and 2022-23). <p>Permanent positions (no cost add) for Central Applications Branch (43 positions) and Policy Enforcement Branch (ten positions).</p>	<ul style="list-style-type: none"> • \$12.1 million in 2020-21 • \$17.5 million in 2021-22 • \$25.6 million in 2022-23 • \$16.6 million in 2023-24 and ongoing 	<ul style="list-style-type: none"> • 75 positions in 2020-21 • 115 positions in 2021-22 • 170.6 in 2022-23 and ongoing
2021-22	<p>Provided funding for:</p> <ul style="list-style-type: none"> • Expansion of Medical Breach Enforcement Section and centralization of investigations (17 positions and \$2.6 million ongoing). • Improving timeliness of investigations of complaints against caregivers (seven positions and \$1 million ongoing). • Ensuring compliance with SNF staffing requirements and assessing increased penalties per Chapter 13 of 2020 (AB 81, Committee on Budget) (six positions and \$939,000 ongoing). • Establishing regulations for developing PPE stockpiles for health care and essential workers per Chapter 301 of 2020 (SB 75, Pan) (one position [two half-time positions] and \$164,000 ongoing). 	\$4.7 million ongoing	31 positions
<p>LTC = long-term care; FRI = facility-reported incident; L&C = licensing and certification; CDPH = California Department of Public Health; IT = information technology; SNF = skilled nursing facility; CNA = certified nurse assistant; and PPE = personal protective equipment.</p>			

