

## Recent Federal & State Skilled Nursing Facility Legislation

**PROPOSED FEDERAL LEGISLATION.** In August 2021, a group led by Senators Ron Wyden of Oregon and Bob Casey of Pennsylvania introduced the Nursing Home Improvement and Accountability Act of 2021. Some of the main provisions of the bill would:

- Raise salaries and benefits for nursing home staff by giving states the option of an increase in federal Medicaid matching funds, available over six years. Low wages in the nursing home industry make for constant turnover, a critical problem even before the pandemic. The bill also starts a process for setting minimum staffing thresholds.
- Require nursing homes to have an infection prevention and control specialist (California implemented this requirement with AB 2644 (Wood)).
- Require nursing homes to have a registered nurse available 24 hours a day, instead of the current eight hours.
- Bolster state inspections of nursing homes, and add more low-performing facilities to a "special focus" program that helps them improve quality.
- Forbid nursing homes from requiring residents and families to agree in advance to arbitration, thereby waiving their rights to go to court over disputes involving care.

### 2021 CALIFORNIA SNF LEGISLATION.

**AB 279 (Muratsuchi)** prohibits the owner of an intermediate care facility or a skilled nursing facility (SNF) from terminating, or making significant changes to, its skilled nursing or supportive care services during the state of emergency related to COVID-19 unless the owner files a bankruptcy petition. Requires facility owners to notify all residents and their representatives of any resident's COVID-19 infection. Contains an urgency clause to ensure that the provisions of this bill go into immediate effect upon enactment. AB 279 is on the Governor's Desk, pending a signature or veto.

**AB 323 (Kalra)** changes the standard for Department of Public Health (DPH) when issuing penalties against long-term care (LTC) facilities for violations that result in the death of a resident from "direct proximate cause" to "substantial factor" and the death was a result of the violation. Increases the amount of civil penalties assessed against LTC facilities. AB 323 is on the Governor's Desk, pending a signature or veto.

**AB 749 (Nazarian)** prohibits a SNF from contracting with a person as a medical director if the person is not, or will not be within five years, certified by the American Board of Post-Acute and Long-Term Care Medicine as a Certified Medical Director. AB 749 is on the Governor's Desk, pending a signature or veto.

**AB 1042 (Jones-Sawyer)** authorizes DPH, when a SNF fails to pay certain penalties, and all appeals have been exhausted, to provide written notice to the SNF and any “related parties” (businesses in which the SNF owner has an ownership or control interest of 5% or more), that DPH may take legal action to recover the unpaid penalty amount from the SNFs’ financial interest in the related party. Requires DPH to give written notice to related parties when a citation has been issued against a SNF, and to advise the related parties of the potential action if the violation is not remedied. Requires the Department of Health Care Services to give notice to related parties that DHCS may take legal action to recover unpaid quality assurance fees from the SNFs financial interest in a related party. AB 1042 is on the Governor’s Desk, pending a signature or veto.

**AB 1502 (Muratsuchi)**, the Skilled Nursing Facility Ownership and Management Reform Act of 2021, re-writes current law with respect to SNF licensing and change of ownership (CHOW) approvals by DPH. AB 1502 is pending a hearing in the Assembly Health Committee.

**SB 650 (Stern)** requires an organization that operates, conducts, owns, manages, or maintains a SNF to prepare and file with the Office of Statewide Health Planning and Development (OSHPD) an annual consolidated financial report that includes data from all operating entities, license holders, and related parties in which the organization has an ownership or control interest of 5% or more and that provides any service, facility, or supply to the skilled nursing facility. SB 650 also requires management companies and property companies that are not related by ownership or control to one of those organizations, but that contract with, or have entered into leases with, one of those organizations, to file an annual consolidated financial report. Requires OSHPD to post those reports and related documents to its internet website. SB 650 is on the Governor’s Desk, pending a signature or veto.

#### **PREVIOUS SNF LEGISLATION.**

**2644 (Wood) Chapter 287, Statutes of 2020**, requires a SNF, in the event of a declared emergency related to a communicable disease, to report each disease related death to DPH within 24 hours. Requires DPH to make the total number of disease related deaths reported, and the location at which they occurred, available on its internet website on a weekly basis. Requires DPH to disclose the information in a manner that protects patients' privacy. Requires SNFs to have a full-time, dedicated Infection Preventionist.

**AB 1695 (Cabrillo) Chapter 832, Statutes of 2019**, requires a SNF to give a written notice to all residents of the facility 90 days prior to a transfer of management or a CHOW, and requires all employees to be retained for a 60-day transition employment period.

**1953 (Wood) Chapter 383, Statutes of 2018**, expands the disclosure requirements that applicants for a SNF license must make to DPH to include whether or not the applicant or a general partner, director, or officer of the applicant has an ownership or control interest of 5% or more in a corporation, sole proprietorship, or partnership that provides any service to the SNF. Requires an applicant, with such interest, to disclose all services provided to the SNF, the

number of individuals who are intended to provide that service at the SNF, and any other information requested by DPH.

**AB 2245 (Kalra) of 2020**, AB 506 (Kalra) of 2019, and AB 1335 (Kalra) of 2017 were all substantially similar to AB 323. AB 2245 was not heard in the Assembly Health Committee due to the shortened legislative calendar as a result of the COVID-19 pandemic. AB 506 was vetoed by the Governor, who stated, “Patient safety and quality care is of the utmost importance, and I am committed to protecting the vulnerable residents of LTC facilities. This bill began as a laudable effort to update the standard for determining a facility's responsibility for the death of a patient or resident. However, I am concerned that the language, in its current form, would create more confusion than clarity and would not help DPH to enforce the law.” AB 1335 was ultimately amended to address a different subject matter.

**AB 348 (Brown) of 2015**, would have required DPH to apply the same time periods that are required for complaint investigations, inspections, and issuance of citations, to reports from licensed long-term health care facilities, and would have required DPH to analyze its compliance on a quarterly basis with the time periods for investigations that were established by budget trailer bill language for complaints and expanded by this bill to facility reports. AB 348 was held in the Senate Appropriations Committee.

**AB 641 (Feuer), Chapter 729, Statutes of 2011**, eliminated the citation review conference process from the citation appeals process for LTC facilities, and allowed fines to be levied from both state and federal agencies when an incident violates both state and federal laws.