

**Testimony of LeadingAge California  
by  
Jack Christy, Senior Policy Advisor  
before the  
Assembly Aging and Long-Term Care Committee  
and  
Assembly Health Committee**

**Re: Nursing Home Complaint Investigation  
January 21, 2014**

GOOD AFTERNOON Chairs Yamada and Pan, and Members of the Assembly Health Committee and Aging and LTC Committee. LeadingAge CA thanks you for this opportunity to share our observations and recommendations related to skilled nursing facility complaint investigations.

My name is Jack Christy and I am a Senior Policy Advisor for LeadingAge California, an association of not-for-profit providers of affordable housing, assisted living, skilled nursing care, home and community-based services, and retirement community living. While some of our members have been caring for seniors for over 100 years, the association has been in existence for only fifty years. Currently, our members serve more than 100,000 seniors across the “continuum of aging” in California.

**Broken Beyond Repair –**

LeadingAge members have long stated that the current nursing home survey/certification and enforcement system is broken and beyond repair. In 2008 LeadingAge (the national organization formerly called: American Association of Homes and Services for the Aging) published

its report on the survey and certification system, called Broken and Beyond Repair: Recommendations to Reform the Survey and Certification System. A copy of that report is attached hereto and incorporated herein by reference.

It is not surprising that the problems identified in the 2008 national report are the same problems long plaguing California's nursing home enforcement system. California is home to more than 10 percent of the nation's senior population, thus closely mirroring the national experience.

#### Licensing and Certification Must Lead

My testimony today will identify common problems in the licensing and certification enforcement system encountered by our members. But first, the allegation that the department "administratively dismissed" nearly 1000 complaints against Certified Nurse Assistants (CNAs), require comment. The very idea that a direct care worker could be administratively "excused" from serious alleged acts, presents an immediate jeopardy to residents, and puts the provider at risk for retaining or hiring a direct care staff person who may have committed such acts. When a complaint investigation is launched against a direct care worker it is noted in the department's data base. Providers can check this database when hiring new staff or periodically for their existing staff. Administrative dismissal of these allegations provides no protection for residents or providers. We must do better in the 21<sup>st</sup> century.

#### New Delivery System Requires New Oversight System

Assembly Members here today know well that the health care system is shifting and changing at an accelerating pace. What used to be the health care delivery system is no longer. What takes its place is still developing and will continue to evolve for many years to come. The regulatory/oversight system must keep-up. It is time to fundamentally re-assess how to regulate long-term care services and supports (LTSS) across the continuum of services and supports needed for community-based care, the predicate to “aging in place.” Hopefully, this hearing may generate stakeholder interest in re-thinking licensing and certification for the 21<sup>st</sup> century world of greater LTSS.

### L&C Must Have The Resources

LeadingAge CA recognizes that the department must have a sufficient number of appropriate staff to perform its mandated responsibilities under both state and federal law, including the timely response to complaints. We also recognize that factors such as turnover, vacancy rates and the length of time it takes to hire and train a surveyor can impact the department’s ability to meet these mandates.

### Long Delays

Nevertheless, no one is served by delays in responding to complaints, completing the investigations or in levying and adjudicating any enforcement actions as a result of the investigation. We are very much aware of deficiencies that were issued several months (sometimes years) after the alleged incident occurred. Those sorts of delays neither hold facilities appropriately-accountable for non-compliance, nor protect residents.

## Self-Reporting

Besides complaints, there are several categories of facility self-reported events that must be investigated: instances or alleged or suspected abuse, unusual occurrences and others. The criteria for reporting are often unclear in statute and regulations resulting in massive over-reporting by providers fearing penalties for not reporting. Some of these events have specific timeframes within which they must be reported. Over the years, even within the department and its district offices there have been inconsistent interpretations of what needs to be reported (example: some district offices at one point in time required that all falls be reported as unusual occurrences).

## Inconsistent Statutes and Regulations

Nursing home complaint investigation and enforcement is made even more difficult by the inconsistencies between the reporting requirements for alleged or suspected abuse under the Health and Safety Code, and the provisions of the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA) under the Welfare and Institutions Code. EADACPA provides strict criteria under which certain allegations of abuse that originate from individuals with dementia or other cognitive impairment do not have to be reported. The Health and Safety Code does not.

All providers pay licensing fees to support the licensing workload and to match the federal funds paid to conduct work for CMS. These licensing fees go to pay for mandated work. Currently, neither providers nor residents are “getting their money’s worth” – we are paying for services that we are not receiving, i.e., timely complaint investigations.

### Recommendations Near-Term:

- In addition to the information provided through the Licensing and Certification Program's Annual Fee Report, we recommend a thorough workload report to better understand the reasons for the delays, and make adjustments to the licensing fees and position authority, accordingly.
- Re-open the administratively-dismissed complaints against C.N.A.s so that residents and providers are both protected from employees who jeopardize resident health and safety.
- Improve clarity and consistency between the various reporting requirements. It is particularly important to better-define "unusual occurrences" and "abuse" to bring consistency between the abuse reporting requirements for alleged or suspected abuse (in the Health and Safety Codes) and the requirements contained in EADACPA.
- Ensure fair enforcement and dispute resolution.

### Recommendations Mid-Term:

- Continue to improve the metrics gathered to analyze and understand outcomes in health care and base performance decisions on such metrics.
- Increase collaboration between and among providers and state surveyors.

- Increase incentives for high quality performance.
- Convene stakeholder process to define a LTSS licensing and certification protocol that is commensurate with the new health care delivery reality.

Again, LeadingAge CA thanks you for the invitation to participate and share its perspective on regulation and oversight of nursing home care. I would be pleased to respond to questions you may have.