

June 5, 2020

## **CANHR's Ten-Point Plan to Reform California Nursing Homes**

**COVID-19 has caused unprecedented devastation and tragedy in nursing homes.** Years of understaffing, poor infection control and toothless enforcement of the standards of care have led to dangerous habits and significant tolerance for poor care. When the virus came to California, its nursing homes were universally unprepared to protect their residents and staff, and most were simply incapable of good preventive care because they had never seen it.

Nursing home residents are scared, angry and frustrated. Too many of them have died. The pandemic has forced the public's attention to the corrosive state of affairs in long term care and to the yawning gap between the care we are paying for as taxpayers and the care that is actually delivered to residents.

COVID-19 alone has not killed 2,000 nursing home residents as of June 2020. Inattention and indifference from policymakers has fostered a long term care system that encourages institutionalization, marginalization and neglect.

There is a better way. California can undertake several actions to reduce the suffering in nursing homes. The following are some of the most important.

### **One ⇒ Give top priority to helping people stay out of nursing homes.**

Californians who need long term care overwhelmingly prefer to receive it at home or in community settings rather than in nursing homes, which are widely feared. Home care is not only more popular, it is generally far less expensive and dangerous than nursing home care.

California should reform its impenetrable long-term care system to serve this priority. Make it easy for people needing long term care to get it at home or in home-like settings. Doing so will force nursing homes to become more livable places in order to remain in business.

*How can it be that the Newsom and Trump Administrations are currently pumping in hundreds of millions of new dollars into California nursing homes where thousands have died while [the State is proposing to pull the plug on the most vital programs](#) that help vulnerable people get care at home?*

## **Two ⇒ Put the “home” back in nursing homes.**

One of the greatest fears about nursing homes is that one will be warehoused in a dirty, smelly, institutional facility where three-to-four residents are crammed into small rooms and have their privacy and dignity stripped away. Indeed, that is the grim reality for far too many nursing home residents in California, where the environmental standards for nursing homes are almost as old and outdated as many of the facilities. California should set new standards calling for spacious private or semi-private (no more than two residents) rooms with modern bathrooms, bathing facilities, therapy rooms and homelike design that give residents a fighting chance to survive future outbreaks of infectious diseases. Operators who fail to modernize their facilities should be forced to give up their licenses.

*How can it be that billionaire nursing home operators who own decrepit facilities are posing as wards of the state, making excuses that it is up to the state, not themselves, to pay to modernize their warehouses?*

## **Three ⇒ Set safe staffing levels.**

California nursing home operators have been quick to credit the heroic work of their caregivers during the pandemic, but actions by operators have often been far from heroic. From the safety of their luxury mansions, chain operators expose caregivers to dangerous working conditions while paying them so little. Getting sick is not an option as caregivers are forced to work two to three jobs in order to make a living. California’s minimum staffing requirements for nursing homes are manifestly unsafe, with operators fighting reforms at every turn. The poor quality of nursing home care cannot be improved until safe staffing standards are set and enforced and caregivers are paid living wages.

*How can it be that one of the first actions taken by the California Department of Public Health at the outset of the crisis was to [waive California’s inadequate, loophole-ridden minimum staffing requirements](#) for nursing homes?*

## **Four ⇒ Put the “nursing” back in nursing homes.**

At a time when advanced nursing skills have never been more needed to safely care for residents with complex health needs, registered nurses (RNs) with these skills have become nearly extinct in many nursing homes, especially so in facilities that have experienced deadly outbreaks. It is not uncommon for nursing homes to operate without RNs on afternoon and night shifts or at all on weekends. Residents routinely die in nursing homes because they lack experienced RNs to assess and respond to their needs during medical emergencies. At a minimum, California should require nursing homes to have RNs engaged in direct care 24 hours a day, 7 days a week, with no less than .75 hours of RN time per resident each day.

*How can it be that California law does not set minimum requirements on RN staffing in nursing homes?*

**Five ⇒ Ensure nursing homes are prepared for emergencies and pandemics.**

In today's California, where the pandemic and wildfire season are about to collide, it is critical that nursing homes be thoroughly prepared to keep residents safe during emergencies. Yet the opposite is true. The horrific and ever-rising COVID-19 death toll in nursing homes is one indicator of failings but there are many others. At this moment, few California nursing home operators are prepared to keep residents safe during the Public Safety Power Shutoffs (PSPS) and other types of emergencies that are right around the corner. Rather than addressing this danger head-on, the nursing home industry and the California Department of Public Health are fighting and obstructing legislation (SB 1207) aiming to address it.

*How can it be that the federal HHS Office of Inspector General (OIG) recently found [over 300 violations of emergency preparedness and life safety code requirements](#) in 19 California nursing homes it visited and that OIG concluded that the California Department of Public Health is not enforcing these requirements?*

**Six ⇒ Crack down on nursing home slumlords.**

The pandemic has exposed horrific conditions in many California nursing homes, where even in the best of times residents are often [subjected to life-threatening infections](#), mistreatment, neglect and abuse. Every year, California nursing home inspectors document epidemic levels of elder abuse in California nursing homes, but state officials take no meaningful actions to prevent abuses from happening again and again. California's nursing home slumlords operate with impunity and without concern that even the most shocking cases of abuse and neglect will threaten their licenses or business model. The state's enforcement system needs to be overhauled, but one immediate action that would get the attention of slumlords is a ban on admitting new residents when violations are detected. The Legislature should authorize this sanction and direct that it be applied whenever infection control violations are detected or any other deficiencies present risks to resident health and safety.

*How can it be that California nursing homes receive no sanctions of any type for 99 percent of infection control violations cited by the California Department of Public Health?*

**Seven ⇒ Remove the welcome mat for bad actors.**

Shockingly, operators no longer need a license to own or run nursing homes in California. Virtually anyone or any company can acquire nursing homes in California, no matter how terrible their track record, incompetent, or financially unqualified they may be. The Department of Public Health's longstanding failure to screen out unfit operators as required by law is like a welcome sign to bad actors who see opportunities to exploit nursing home residents for profit. As a result, California nursing homes are dominated by for-profit chains that, at best, are known for putting profits over care and, at worst, for routinely exposing residents to neglect and abuse that is causing residents to suffer severe harm, misery and torturous deaths. California must finally start enforcing its

current licensure screening requirements and must strengthen them to prevent unqualified, unsuitable and unscrupulous persons or companies from acquiring and operating nursing homes.

*How can it be that the California Department of Public Health allows known bad actors to own and [run nursing homes without ever obtaining a license](#) to do so and continues to allow unfit operators to do so even after denying them licenses due to dangerous conditions in their facilities?*

### **Eight ⇒ Ban self-dealing schemes that enrich nursing home operators.**

California's Medi-Cal rate system for skilled nursing facilities – known as AB 1629 – is a magnet for bad actors seeking to profit at the expense of residents' and the Medi-Cal program. The rate system allows wealthy operators to siphon off vast amounts of Medi-Cal funds intended for care and staffing through self-dealing schemes. A 2018 investigation by the State Auditor found that California nursing home chain payments to related parties grew astronomically in recent years, with annual transactions now exceeding \$1 billion. Incredibly, the Administration's current budget plan would extend the failed AB 1629 rate system for another five years, allowing nursing home chains to continue to systematically loot the Medi-Cal program while also granting nursing home operators large rate increases that will cost the California budget hundreds of millions of dollars over this period.

*How can it be that California would extend the failed AB 1629 rate system for another five years and expend vast new sums on substandard nursing home care that will come at the direct expense of home and community-based services that Californians prefer?*

### **Nine ⇒ Strengthen opportunities for elder abuse victims to obtain justice.**

The California Department of Public Health has for decades proven incapable of enforcing our standards of care and protecting residents from abuse, neglect, and violations of their rights. Residents are far more motivated to protect themselves than bureaucrats but are not given the tools to do so. Ubiquitous pre-dispute arbitration agreements deny justice to victims of abuse and neglect. The burden of proof for physical abuse cases is inexplicably higher than it is for financial abuse. The private right of action for violations of resident rights has been undermined by its ambiguity and age. The legislature should free residents to enforce the laws designed to protect them.

*How can it be that understaffing is posted publicly and the Department yawns? That residents are routinely drugged to keep them "manageable" and nothing is done? Or that residents are illegally dumped into homeless shelters, motels, and hospitals and the Department [shamelessly fights to do nothing about it](#).*

**Ten ⇒ Declare independence from the nursing home industry.**

The Administration, Legislature and the Department of Public Health need to finally break free from the grip of the nursing home industry, which has virtually controlled state policymaking and budget decisions involving nursing homes for nearly two decades. While the means through which the industry has obtained such powerful influence is worthy of investigation, its existence is not in any doubt. For all practical purposes, unscrupulous nursing home chains in California hold virtual veto power over nursing home reform legislation of any consequence.

*How can it be that nearly two decades have passed since California last enacted major reforms to improve the quality of nursing home care?*

*How can it be that the California Department of Public Health never speaks out about the epidemic of elder abuse that has occurred in California nursing homes and stands silent even today about the thousands of neglected residents who are suffering and dying alone in substandard nursing homes?*