

# Bad Deal, Bad Care



It's Time to  
Stop Dumping  
**Money**

Into California's  
Nursing Home  
Chains

Reforming the AB 1629 Nursing Home  
Reimbursement System to Serve Residents  
Rather than Enrich Nursing Home Owners

**CANHR**  
*Long Term Care Justice and Advocacy*

# No More Blank Checks for California Nursing Home Chains

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At this moment California has a golden opportunity to dramatically improve the care of its oft-mistreated nursing home residents. Its controversial and extraordinarily expensive reimbursement system for skilled nursing facilities – known as AB 1629 – will sunset on July 31, 2020, offering the chance to redesign the failed system to serve residents’ interests.

[AB 1629](#) is the product of gut and amend legislation in 2004 orchestrated by the nursing home industry. [Its stated aims](#) are to ensure individual access to appropriate long-term care services, promote quality resident care, advance decent wages and benefits for nursing home workers, support provider compliance with all applicable state and federal requirements, and encourage administrative efficiency. *None of these goals have been achieved.*

Instead, AB 1629 has produced billionaire owners, scandalously poor care, rampant discrimination against Medi-Cal beneficiaries and over a billion dollars per year in new General Fund costs during an era where home and community-based services faced relentless cuts.

It’s no surprise that AB 1629 richly serves the interests of California’s nursing home chains. They and their allies wrote and lobbied for the law, not bothering to disguise their bait and switch tactics. While claiming the bill would greatly improve resident care and nursing home staffing, they crafted it with the sole purpose of increasing Medi-Cal payments to nursing homes.

In that, they have been incredibly successful. Since AB 1629 was enacted 15 years ago, annual Medi-Cal payments to freestanding skilled nursing facilities soared from about \$2.5 billion to more than \$4.7 billion today, while fewer Medi-Cal beneficiaries are being served.

The Legislature has extended AB 1629 several times since it was first enacted despite consistent findings that nursing home chains are using it to enrich themselves at the expense of residents and taxpayers. It made modest changes in 2010 after [California Watch](#) published a series of articles showing that a quarter of the state’s nursing homes cut staff or slashed wages while padding their bottom lines. But the reimbursement system remains a blank check.



**"Nursing Homes Received Millions from California Taxpayers while Cutting Staff, Services"**  
- California Watch

## Poor Care is Endangering Residents

Today, the quality of care in California nursing homes has never been worse, as nursing home chains have repeatedly broken their promise to improve care. Consider the following indicators:

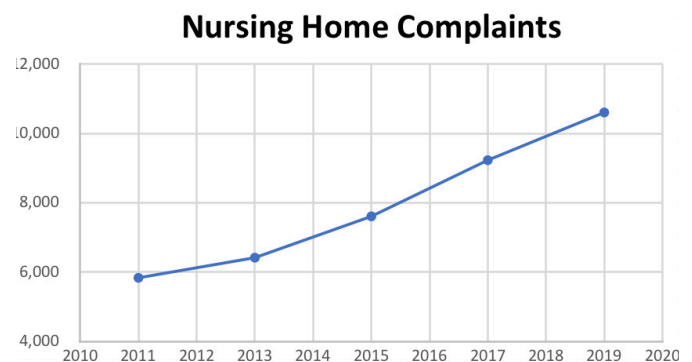
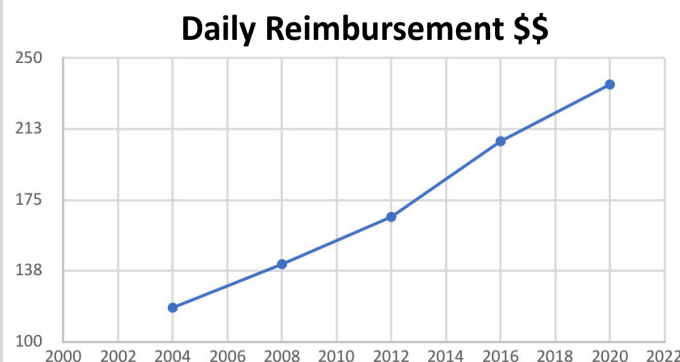
- **Complaints against California nursing homes are exploding.** According to [publicly reported data by the Department of Public Health](#), the public filed 10,021 complaints against nursing homes in 2017-18, up 54% from just four years ago (6,517 in 2013-14).
- **Understaffing is rampant.** [More than half of California’s nursing homes sought waivers](#) to evade modest minimum staffing requirements that took effect in July 2018. The [DPH approved waivers for 362 facilities](#), allowing them to staff at dangerously low levels.
- **Residents are increasingly suffering from abuse and neglect.** Recent reports and investigations describe [sexual abuse](#), [life-threatening infections](#), [abusive use of mind altering drugs](#), [neglect](#), [chronic](#)

[understaffing](#), [illegal evictions](#), [unfit operators](#), [placement in dangerous facilities](#), [nursing home closures](#), [chemical restraints](#), [kickbacks](#), [dumping](#), [self-dealing by operators](#), [profiteering](#) and more.

- **Medi-Cal beneficiaries face pervasive discrimination by nursing homes.** Outrageously, Medi-Cal is allowing nursing home operators to treat Medi-Cal beneficiaries as third-class citizens. It [is next to impossible for them to gain admission](#). Those who do are often segregated in sections of a facility that offer inferior care and accommodations.
- **California's largest nursing home chain is a serial offender.** [Three of its nursing homes were decertified following the deaths of residents due to neglect](#). Many of its [other nursing homes have been cited for severe neglect](#). The [Department of Public Health issued 10 citations/fines to one of them in February 2019](#). Despite [numerous scandals](#) and [reports that it is siphoning of public funds intended for care](#), the Department of Public Health is allowing it to operate about two dozen nursing homes without licensure approvals.
- **Nursing home chains routinely engage in self-dealing scams to pad and hide profits.** In 2018, the [California State Auditor reported](#) that residents are increasingly subjected to severe neglect while profits for nursing home chains engaged in self-dealing are soaring. Between 2006 and 2015, nursing home deficiencies that caused, or were likely to cause, serious injury, harm, impairment, or death to residents increased by 35 percent. Meanwhile, nursing home payments to related parties grew by 66 percent, and now exceed \$1 billion annually.
- **Public spending favors institutional care.** California's Medi-Cal program spends well more than \$5 billion annually on nursing home care, despite pervasive neglect and abuse. Older adults overwhelmingly prefer to receive care in more home-like settings, and yet California offers a limited number of cheaper Home and Community-Based Service (HCBS) alternatives to nursing homes. HCBS programs are often difficult to access due to limited slots, strict enrollment caps, and waitlists that are several years long.

*"Many nursing homes appeared to use the cash infusion to help bolster their bottom lines." - California Watch*

### We Are NOT Getting What We Paid For: Reimbursement Has Nearly Doubled, So Have Complaints



## A New System is Needed

It is time to start over and create a reimbursement system that does not rely on blind trust with California's disreputable nursing home chains. The Legislature should adopt the following reforms to ensure that [AB 1629's original goals](#) will finally be met.

### 1. Promote quality resident care by:

- Banning self-dealing and other financial schemes that nursing home chains are using to divert public funds that are intended to be spent on care and staffing.
- Imposing strict caps on administrative costs, including payments to management companies and setting limits for rents, lease back arrangements and interest rates.
- Setting a safe staffing standard that requires each nursing facility to provide at least 4.1 nursing hours per resident day, including at least 1.3 hours of care by licensed nurses (RNs and LVNs), of which the RN component would be at least 0.75 hprd.
- Repealing the staffing waiver process established by SB 97 (2017) that is allowing hundreds of nursing facilities to circumvent inadequate minimum staffing requirements.
- Fully funding the long-term care ombudsman program as envisioned by W&I Code §14126.022(d).



### 2. Ensure individual access to appropriate long-term care services by:

- Requiring nursing facilities to give applicants on Medi-Cal equal access to admission.
- Directing DPH to strongly enforce the equal access protections and existing laws and regulations that prohibit discrimination against and segregation of persons on Medi-Cal.
- Rebalancing Medi-Cal spending towards consumer-preferred, lower cost alternatives to nursing homes.
- Exploring alternative models for HCBS with no enrollment caps.
- Creating parity in provider reimbursement rates. Every provider rate increase for the nursing home industry should be tied to a proportionate rate increase for non-institutional alternatives.

### 3. Advance decent wages and benefits for nursing home workers by:

- Requiring nursing facilities to increase wages and benefits each year by at least the percentage of aggregate cost increases authorized by the Legislature.

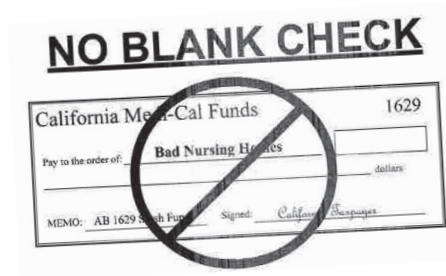
### 4. Support provider compliance with all applicable state and federal requirements by:

- Amending the audit system for nursing home staffing levels to examine compliance throughout the year, not just for a handful of days before inspections; to use the federal Payroll Based Journal (PBJ) staffing data system to determine compliance continuously; and strengthen penalties against understaffed facilities.

- Directing DPH to ban admissions at understaffed nursing facilities and giving it authority to impose bans on admissions when other violations endanger residents.
- Preventing nursing home operators with a poor record of providing care from getting additional licenses or taking over operations at facilities without prior state approval. This goal is taken directly from the original statement of principles circulated by the sponsors of AB 1629 in 2004.
- Establishing a system to regulate nursing home chains that identifies each chain operating in the state, continually assesses its performance, and uses the assessments to guide licensing, oversight and enforcement actions for all of its facilities.
- Fully banning reimbursement of legal fees when nursing homes appeal citations, enforcement penalties and other government actions so operators are not rewarded for fighting government efforts to hold them accountable.
- Prohibiting licensees from contracting with management entities to circumvent their duties to operate facilities in accordance with state and federal requirements.

#### **5. Encourage administrative efficiency by:**

- Requiring disclosure and auditing of all nursing home chains' corporate consolidated financial statements.
- Requiring nursing facilities to spend Medi-Cal funds within the cost centers for which they are allocated.
- Repealing the poorly designed quality and accountability system that DPH and DHCS developed because it does not serve its purpose to tie payments to quality.
- Revamping the audit system to increase the frequency of full scope audits, to audit nursing home chains as a group, to identify and recover overpayments with interest, to detect and penalize fraudulent reporting, and to modernize cost reports.
- Eliminating the mandate to pay facilities for the cost of new state or federal mandates on top of other rate increases.
- Directing the Departments of Health Care Services and Public Health and the Office of Statewide Health Planning and Development to carefully coordinate their activities in order to ensure that all of the above goals are achieved.



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