



Office of the
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The State Long-Term Care Ombudsman is an independent advocate located within the California Department of Aging. Points of view, opinions or positions of the State Long-Term Care Ombudsman do not necessarily represent the views, positions or policy of the California Department of Aging.

November 30, 2017

Jean Iacino, Deputy Director
Center for Health Care Quality

Chelsea Driscoll, Chief
Policy and Enforcement Branch
California Department of Public Health
MS 3203, P.O. Box 997377
Sacramento, California 95899-7377

RE: Comments on Draft Senate Bill (SB) 97 Workforce Shortage Waiver Provisions

Dear Ms. Iacino and Ms. Driscoll:

Thank you for considering these comments on the draft SB 97 workforce waiver provisions the Department shared with stakeholders on November 17, 2017. Please find below some concerns and suggestions from the Office of the State Long-Term Care Ombudsman.

As articulated in my August 22, 2017 letter to Scott Vivona and Chelsea Driscoll, I am troubled by the ability of skilled nursing facilities to seek waivers to comply with staffing requirements. I recommend that the Department only grant waivers on a very time-limited basis, e.g., initially one calendar year quarter, with no more than three additional quarters. Waivers should never be granted for more than one year.

When approving a waiver, the Department should place a prohibition on new admissions until staffing meets the required minimum levels. Facilities should not be allowed to understaff their facilities and continue to accept new patients or residents. That would only make matters worse for all persons receiving care.

In addition, a waiver should never allow staffing to fall below the currently required 3.2 hours. Facilities granted waivers, should not be eligible for quality payments when they cannot meet the *minimum* staffing requirement. I encourage the Department to seek trailer bill language to remove this provision from the law. In my opinion, it is absurd to reward facilities with additional money when they cannot even meet minimum staffing requirements.

I would hope that the Department would take a hard look at a facility's current and past performance when evaluating a waiver request. Granting a waiver to a poorly performing facility will only make matters worse for residents.

I continue to have grave concerns about the use of nursing assistant trainees as direct caregivers to count toward the increase in the minimum staffing requirement. As I stated in the letter referenced above, residents

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have complex conditions that require well-trained and certified staff to provide care. I strongly encourage the Department to seek trailer bill language to repeal this dangerous provision.

Thank you for considering these recommendations about implementing these amendments. I hope the Department will stand firm in protecting residents and promoting the best possible care for residents. Please let me know if you would like to discuss these recommendations in greater detail.

Sincerely,

A handwritten signature in blue ink, appearing to read "JR", with a stylized flourish at the end.

Joseph Rodrigues
State Long-Term Care Ombudsman