

August 2, 2019

Senator Anthony Portantino, Chair  
Senate Appropriations Committee  
State Capitol, Rm. 2206  
Sacramento, CA 95814

Submitted via web portal [calegislation.lc.ca.gov/Advocates](http://calegislation.lc.ca.gov/Advocates)

Re: AB 1695 - **Oppose**

Dear Senator Portantino:

California Advocates for Nursing Home Reform (CANHR) and its members strongly oppose AB 1695. The recent amendments to the bill have eviscerated the potential improvements offered by the new suitability screening process. In fact, the new amendments would further damage an already broken change of ownership process and ultimately harm nursing home residents.

CANHR is a non-profit organization that has advocated for better long term care and the rights of long term care consumers since 1983. Along with direct advocacy for consumers, their families, and representatives, we promote systemic reform through legislative and regulatory policy as well as litigation.

## I. Foundational Things to Know About Nursing Home Oversight in California

In order to better understand the problems with AB 1695, it is important to know the current state of the regulatory environment.

- A. The Department of Public Health (DPH) Misses Deadlines. Complaint investigation deadlines are imposed by statute and there is massive noncompliance. All nursing home complaint investigations must be completed in 60 days but the average open complaint is now **562 days old**.<sup>1</sup> More importantly for AB 1695, DPH is also tasked with approving or denying nursing home Change of Ownership applications (CHOWs) but some applications have been pending for **five years**. Consequently, these nursing homes are being run by unapproved operators, often with histories of pervasive abuse and neglect.
- B. DPH Doesn't Enforce Requirements. Health and Safety Code Section 1253 bars unlicensed people or entities from operating or managing nursing homes but DPH has permitted operators to disregard this requirement. DPH takes no meaningful action when providers ignore the current CHOW process. For example, Crystal Solorzano acquired Holiday Manor Care Center, a nursing home in Los Angeles County, on April 30, 2018

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<sup>1</sup> Source: [https://www.cdph.ca.gov/Programs/CHCQ/LCP/Pages/FieldOperationsComplaints\\_ERIs.aspx](https://www.cdph.ca.gov/Programs/CHCQ/LCP/Pages/FieldOperationsComplaints_ERIs.aspx)

but did not submit a CHOW application until January 11, 2019. For this breach of the law, DPH took no action.

- C. DPH Fears Facility Shut-Downs Because Residents Are Upended. This leads to very high tolerance for poor or even deadly care. For example, Riverside Heights Convalescent, operated by Crystal Solorzano, is a “Special Focus Facility” garnering record numbers of complaints and citations, including the sexual assault of a nonverbal female resident *twice in the same month*. Yet, the facility continues to admit and endanger new residents.

The result of DPH inaction is a nursing home ownership system that permits bad operators to assume operations without approval, knowing that they will not be forced to stop operations. Unlicensed, unvetted operators are running nursing homes despite histories of terrible care and DPH is paralyzed to do anything about it.

## II. How AB 1695 Aggravates the Broken Change of Ownership System

AB 1695 is meant to create a provisional licensing process that prevents nursing home takeovers until DPH has found the new operator is suitable. But the bill is missing critical pieces, full of loopholes, and will exacerbate an already dysfunctional change of ownership system.

- A. Licenses Taken by Default. The worst part of AB 1695 is the recent amendment permitting new operators to take over a nursing home when DPH misses the 90-day deadline for action. Under this amendment, operators will no longer merely operate nursing homes without approval while their CHOWs are pending; instead, they will have a statutory imprimatur to run facilities without approval. Licenses are required for many forms of individual and business activity to protect the health and welfare of Californians. Could you imagine a system that let people drive or practice medicine because the state regulatory agency failed to timely act on an application? Licenses should reflect approval by the state rather than successfully running out a clock. Permitting unapproved entities to run nursing homes is a well-known recipe for severely jeopardizing the health and welfare of fragile and disabled older adults.
- B. The Process Will Be Ignored. What happens if an operator does not submit the notice of intent required by AB 1695? There is no enforcement provision, which suits DPH’s willingness to disregard mandates and coddle noncompliant operators.
- C. The Process Is Full of Holes. Provisional license applicants need only submit information for the licensee and an undefined “parent company.” AB 1695’s vague and abjectly incomplete reference to ownership structure will permit bad operators to simply create shell limited liability companies with blank track records to avoid meaningful screening.

Once a provisional license has been granted or taken by default, operators will have entrée to cut staff, strip the residents of care, and grab profits. Once these bad operators are in, DPH will tolerate all forms of neglectful and abusive care, rather than shut down their operations.

### III. The Current Version of AB 1695 Is Not Only Bad Policy, It Will Be Very Expensive.

Instead of streamlining ownership reviews as originally intended, AB 1695 now creates an uncoordinated, multi-layered process that will consume DPH resources. It adds a new vetting process before ownership changes take place, followed by a new provisional licensing process, which is then followed by a return to the current dysfunctional review system if DPH fails to act within 90 days. Compounding the problem, the bill does not say how existing state laws governing nursing home change of ownership will be integrated with the new procedures. It creates a system that is the definition of inefficiency.

Moreover, by creating new incentives for nursing home chains to establish complex ownership structures, AB 1695 will complicate DPH's already difficult task of assessing the fitness of applicants. In so doing, the bill not only defeats its own purpose, it will require more of the DPH's precious resources to review CHOW applications.

Most importantly, there will be the untold costs of poor care from reinforcing and exacerbating a dysfunctional ownership system that allows chain operators with deplorable records to acquire and operate facilities throughout California. The costs of widespread neglect already have a large, direct impact on California's budget.

To give just one example, DPH reports that 10,021 complaints were filed against nursing homes in 2017-18, up 54% from just four years before (6,517 in 2013-14). Consequently, the backlog of complaint and entity-reported incident investigations for nursing homes **grew to 15,889 cases** as of June 30, 2018. This staggering increase occurred despite the Legislature adding hundreds of inspector positions statewide after a scathing 2014 state audit report blasted DPH for a substantially smaller complaint backlog than now exists.

DPH long-ago reached the limits of its resources to successfully license nursing homes and monitor the care that is provided to residents. The median length of time for a nursing home CHOW approval is 404 days. The backlog of uncompleted investigations is near 16,000. AB 1695 is not only bad policy that ultimately harms nursing home residents, it requires a massive waste of taxpayer dollars that are much better served for other languishing DPH functions.

We respectfully urge you to vote no on AB 1695.

Sincerely,



Patricia McGinnis  
Executive Director