

Heidi Steinecker, Deputy Director
Center for Health Care Quality
California Department of Public Health
MS 0512, P.O. Box 997377
Sacramento, CA 95899-7377
By email to: Heidi.Steinecker@cdph.ca.gov

Dear Ms. Steinecker:

As the primary enforcers of state and Federal regulations protecting California's patients, Health Facility Evaluator Nurses (HFENs) have expressed concerns multiple times about ongoing efforts by your office to change the nature of the HFEN role. Your office is again attempting this with the release of an undated Executive Summary outlining a new "Quality and Safety" (Q&S) survey model, to be implemented post-pandemic.

An Executive Summary (ES) is by definition a synopsis of a more lengthy, detailed report but no such report is cited. What document does this ES summarize? This ES makes sweeping generalizations about the causes of problems in Skilled Nursing Facilities (SNFs), as well as the solutions to those problems, but cites no data or scientifically-sound research studies. It contends the decrease in SNF death rates is due to the frequency of CDPH surveyors and HAI staffers being onsite—but again cites no data. The HAI role is quite different than the HFEN role. Was a statistical analysis done controlling for that difference? If not, how do you know it was the presence of HFENs, not HAI personnel, that caused the decrease?

Interestingly, significant changes occurred during the pandemic that the ES failed to mention. One is weekly testing of all SNF staff. From the subjective perspective of those out in the field, this change seems to have the most bearing on reducing outbreaks in SNFs. Another change has been community positivity rates. When your office conducted its "lessons learned" inquiry, was a statistical analysis completed controlling for the impact of weekly staff testing and community positivity rates? If not, how do you know the frequency of HFENs being onsite is the variable that will "result in long-term better outcomes for SNF residents" as the ES contends?

The ES also states the "lack of sustained corrective actions" for problems in skilled nursing facilities (SNFs) are attributable to: 1) less than ideal RN staffing ratios, 2) turnover of administrative leadership and staff, 3) lack of fulltime infection preventionists, and 4) lack of medical director engagement and leadership. On what data do you base these conclusions? Furthermore, how does adding a Q&S survey change RN staffing ratios, turnover in administrative leadership and staff, and lack of medical director engagement? As for full-time infection preventionists, with the issuance on May 11, 2020 of AFL 20-52, CDPH began requiring SNFs to have full-time infection preventionists.

At this time, HFENs are conducting Focused Infection Control surveys and Mitigation Plan (MP) surveys, as well as investigating complaints and facility-reported incidents (FRIs) of all types—both current and those tabled during the first six months of the pandemic. Additionally, HFENs have already doubled up on their workload in order to address the backlog of 13,000+ complaints and FRIs identified in your "Debt Free 2021 Campaign," some of which go back to 2014. Unfortunately, investigations into these extremely old complaints frequently result in no regulatory violation being cited because possible witnesses can no longer recall events—and justice

delayed therefore becomes justice denied.

When Federal recertification surveys resume after the pandemic, HFENs will continue to investigate current and old complaints/FRIs but will also have to devote more than 50% of their time to these week-long surveys. In District Offices where the workload is handled by less than a full complement of HFENs, it has always been a struggle to stay current with complaints/FRIs because the week-long recertification surveys mandated by the Centers for Medicare and Medicaid Services (CMS) are the first priority (hence a 13,000+ complaint/FRI backlog). For instance, the East Bay District Office currently has 50 HFEN positions available but excluding HFENs on leave or not fully trained, has only 24 HFENs to cover 101 SNFs, 32 acute-care and psychiatric hospitals, 43 ambulatory surgery centers, 113 home health agencies, 52 hospice agencies, 67 intermediate care facilities, 49 dialysis clinics, 15 adult day health centers, and a small number of community mental health centers.

We do not see how it is possible to conduct these annual Federally-mandated surveys with one HFEN removed from availability for each CMS survey because the HFEN has been dedicated to the Q&S survey for that SNF. We are gravely concerned that adding one more type of survey to our already over-burdened workload will ensure HFENs have less time to enforce quality standards of care and will decrease the amount of time available to investigate neglect, abuse, and the failure of long-term care facilities to provide care needed for the health and safety of our most-vulnerable Californians.

Your office has been working to change our role since you started as Deputy Director, changes that will undermine our ability to protect patients. These changes were espoused by you prior to the pandemic, and you are now seizing the moment to institute those changes without conducting scientifically-valid data analyses—or if you have conducted such analyses, you are not being fully transparent and sharing that information with your funders, i.e., the people of the State of California.

Some have questioned your motives and contend you are being influenced by the nursing home industry. We implore you to make evidence-based decisions and rely on the expertise of scientific researchers in the field, which is the only way to truly serve the interests of all Californians.

Sincerely,

Over 50 HFEN's signed this notice

[Note: not all shown here because some signed on the hard copy and some signed electronically]

cc: Honorable Gavin Newsom, Governor of California
Dr. Mark Ghaly, Secretary, Health and Human Services Agency
Sandra Shewry, Acting Director, California Department of Public Health
Dr. Erica S. Pan, Acting State Public Health Officer
Tam Ma, Deputy Legislative Secretary, Office of Legislative Affairs
Honorable Adrin Nazarian, Chair, Assembly Aging and Long-Term Care Committee
Honorable Jim Wood, Chair, Assembly Health Committee
Honorable Richard Pan, Chair, Senate Health Committee
Senate and Assembly Budget Committees
Steven Chickering, Associate Regional Administrator, CMS
Michael Connors, Advocate, California Advocates for Nursing Home Reform

Patricia McGinnis, Executive Director, California Advocates for Nursing Home Reform
Charlene Harrington, Ph.D., Professor Emeritus, UCSF School of Nursing