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Senate Committee on Business, Professions and Economic Development and Senate Committee on Health

Joint Informational Hearing: *Increasing Accountability in Care for the Elderly: Oversight of Certified Nurse Assistants*

February 11, 2014

BACKGROUND INFORMATION

California's Long-Term Care Challenge

California is facing a potential crisis in long-term care for its elderly residents. Research indicates, despite an increase in life expectancy, aging populations are heavily burdened by chronic illness and disabilities. An Institute of Medicine report, *Improving the Quality of Long-Term Care*, indicates that most of the increase in demand for long-term care is expected to occur as the "baby boomer" generation ages. The first of the baby boomers reached age 65 in 2011 and the last will do so in 2030. This will result in a 50 percent increase in individuals age 65 and older between 2000 and 2030. (*Trends, Issues and Projections of Supply and Demand for Nursing Aides and Home Health Care Aides*, UCSF Center for Health Professions, 2002)

The Long-Term Care Workforce: A Focus on CNAs

The long-term care workforce is very diverse and is comprised of various health care professionals ranging from licensed medical professionals to unpaid informal caregivers. The direct caregivers who provide most hands-on care include registered nurses (RNs), licensed vocational nurses (LVNs), certified home health aides (HHAs) and certified nurse assistants (CNAs).

There are an estimated 160,000 CNAs working in California (California Department of Public Health, 2013). CNAs are among the state's most highly demanded and largest allied health professionals. These professionals are certified to provide care in hospitals, nursing homes, mental health facilities, developmental centers and private homes. Approximately half of CNAs work in a convalescent or nursing home, an estimated one-quarter work in hospitals and 10 percent work in residential care facilities for the elderly. Over 15 percent of CNAs work in more than one setting. (*Health Care Could Employ 1 Million in California*, Sacramento Business Journal, September 2009)

CNAs care for patients who are infirmed, ill, injured, disabled or otherwise unable to care for themselves. A CNA performs a variety of basic duties that are important for the patient's comfort and recovery. These tasks vary depending on the employment setting but typically include: taking temperatures, pulse, respiration, blood pressure, helping patients with range-of-motion exercises, assisting patients with their daily living needs, serving meals, making beds, and helping patients eat, dress and bathe.

CNAs are paid approximately 10 to 13 dollars per hour and they work approximately 37 hours per week. The United States Bureau of Labor Statistics projects that, between 2008 and 2018, the demand for CNAs will increase by about 19 percent (U.S. Bureau of Labor Statistics, 2010). As a growing occupation with low education and training requirements, the CNA profession has been a target for welfare-to-work and other training programs. The typical career path begins as a nursing aide, progresses to a CNA, a LVN and then a RN. However, according to a 2005 analysis, only 8 percent of CNAs become LVNs. Some studies cite a lack of affordable healthcare and retirement benefits as a reason for leaving the industry. (*Understanding Industry & Employer Changes Among CNAs in the Long-Term Care Industry*, The SPHERE Institute, 2005).

CNA Education and Training

CNAs are required to be at least 16 years of age and have completed a nursing assistant training program approved by California Department of Public Health (CDPH), which includes an examination to test knowledge and skills. The two main types of CNA training programs are facility programs, where licensed health facilities provide both classroom and clinical training, and non-facility programs, such as community and career colleges. Students must complete 60 hours of classroom instruction and 100 hours of on-the-job clinical training.

A criminal record clearance must be performed for all CNA applicants prior to direct contact with patients. Newly hired CNAs are required to take at least 16 hours of orientation on topics including: communication, infection control and safety procedures. The orientation must also include a facility tour, description of the population and a demonstration on the use of equipment in the facility. Every two years, CNAs must show evidence of 48 hours of in-service training in order to renew their certificate. Applicants for re-certification are required to report convictions, disciplinary action and list their current or last employer.

Regulation and Enforcement Authority

CNAs are regulated by the CDPH through the Professional Certification Branch (PCB), which certifies and regulates approximately 160,000 CNAs, 48,000 HHAs and 6,100 Certified Hemodialysis Technicians (CHTs). The PCB has an annual budget of \$10.1 million, two-thirds of which comes from facility licensing fees and federal funds. Prior to 2006, CDPH collected fees for initial and renewal certificates, but as part of the 2006 Budget Act, these fees were eliminated.

The PCB has 19 positions that conduct investigations of allegations/complaints, and CDPH reports that the Investigation Section is in the process of hiring an additional 10 staff including 7 investigator positions. CDPH utilizes the Associate Governmental Program Analyst and Health Facilities Evaluator II classifications to perform its allegation/complaint investigations.

Pursuant to Health and Safety Code section 1522.08, CDPH and the Department of Social Services (DSS) share administrative actions including the denial of an application, the suspension or revocation of any license, special permit, certificate, criminal record clearance or exemption. This process requires a monthly exchange of the administrative actions taken by each department.

CDPH maintains a licensee look up function on its website, which allows the public to verify if an individual is a CNA. CDPH does not track which settings CNAs are employed in during the two year certification period or if the CNA holds multiple positions.

Concerns About Regulation and Enforcement

Last September, the Center for Investigative Reporting (CIR) published a report describing a mass dismissal of open complaints against CNAs and HHAs in 2009 in order to address what was then a large backlog of investigations (*Quick Dismissal of Caregiver Abuse Cases Puts California Patients at Risk*, September 2013). According to the CIR report, between 2004 and 2008, CDPH accumulated more than 900 cases in Southern California alone. In 2009, CIR reported that CDPH ordered its investigators to dismiss nearly 1,000 pending cases of abuse and theft, "often with a single phone call from Sacramento headquarters." The CIR report went on to describe the current practice as one in which investigators are opening and closing investigations into suspected abuse without leaving their desks, resulting in a much lower percentage of complaints that lead to revocation of a CNA certificate. According to CIR, in 2006, CDPH revoked or denied a certification in 27 percent of the complaints it investigated. In 2009, as CDPH eliminated the backlog, only 7 percent of the complaints resulted in a revoked or denied certificate. In 2006, 58 percent of cases were closed without taking any action against a certificate holder. In 2012, this figure had risen to 81 percent of all cases.

In a related article, CIR detailed a particular incident involving a CNA at an assisted living facility licensed by the Department of Social Services (*Elderly Woman's Suspicious Death*

Largely Ignored by State Regulators, Center for Investigative Reporting, September 2013). In 2006, a 95-year-old resident at Claremont Place Assisted Living was rushed to the hospital after she was found with a broken arm, black eyes and her upper lip cut open. The resident died three weeks later. According to CIR's report, a CNA who was working at the assisted living facility was in the room with the resident at the time, and reported to other staff that the resident hurt herself when she fell down in her room. According to the CIR report, other staff members at Claremont Place believed the CNA had physically abused the resident, and the facility director notified the family of the resident that abuse may have been involved. The attending physician at the hospital where the resident was treated alerted CDPH and local police to the possibility of abuse, based in part to concerns relayed to him by Claremont Place staff.

According to CIR, in 2007, a notation in CDPH's log showed the case was assigned to an investigator. CDPH finally closed the case in February of 2013, seven years after the resident died, calling the allegation of abuse unsubstantiated.

It is important to note staff at assisted living facilities licensed by DSS, such as Claremont Place, are prohibited from directly providing medical care. Any medical care needed by residents of assisted living facilities is required to be provided by licensed medical professionals who come to the assisted living facility to provide services. For this reason, assisted living facilities are not the traditional place of employment for CNAs or other types of medical professionals. CNAs have traditionally worked in skilled nursing facilities and other medical facilities licensed by CDPH. However, not only was this CNA working as staff at this facility, according to the CIR report, Claremont Place also had a licensed vocational nurse on staff, whom the CIR report described as the "nursing director." One of the questions raised by these articles is the extent to which licensed medical caregivers are working outside of medical facilities, possibly a reflection of "acuity creep" as assisted living facilities care for sicker and more frail residents, and how this impacts the regulation of these caregivers in terms of complaint referral and jurisdiction.

CDPH Steps to Address Backlog

According to CDPH, in late 2009, a Backlog Action Plan was implemented to address the multi-year backlog within the Investigation Section of the Professional Certification Branch (PCB). At the end of Fiscal Year 2008-09, the Investigation Section had 1900 complaints opened, the oldest of which was filed in 2004. Nearly 800 of these open complaints were unassigned to an investigator, and at the time an average of 111 new complaints were being received each month. As noted in the Backlog Action Plan, delays in investigating complaints "significantly decreases the chance of substantiating the allegation due to the inability to find witnesses, as well as the possible declining health and fading memories of victims and witnesses."

Under the 2009 Backlog Action Plan, the initial guidelines for an investigation to include a field component were: availability of witness(es); if the victim was alive and location known; if the

facility and/or District Office investigated and substantiated the allegation; if physical evidence was available and needed for the investigation and/or if an allegation was egregious in nature or immediately jeopardizes the health and safety of the public. If preliminary phone calls and/or other reviews during the desk portion of the investigation identified a need for a field component, then field work was performed. If, however, the only reason for a field component was to interview the resident who had since passed away, field work would not be performed.

In June of 2013, CDPH issued guidelines for investigations, which included a direction that, "staff is not discouraged from completing a field component if after an assessment of the case, the investigator and manager determine it is warranted based on the guidelines or other special circumstances of the case."

According to CDPH, on average, the PCB Investigation Section receives approximately 1,000 allegations/complaints annually. The tracking system does not distinguish between complaints against CNAs, HHAs or CHTs, but given that CNAs make up approximately 75 percent of these personnel, the majority of these complaints are almost certainly against CNAs. The PCB Investigation Section is currently investigating allegations/complaints received on or after January 1, 2012 (meaning there are no open cases from 2011 or earlier). CDPH reports that it received 937 complaints during the 2012 calendar year, and 314 of these complaints are still open, all of which can be considered "backlogged," because they are more than a year old. In calendar year 2013, CDPH received 904 complaints, and 705 of these were still open as of December 31, 2013. CDPH states that while it does not currently track processing times through the various stages of the complaint/investigation process, it recently completed a detailed work flow analysis, and will begin capturing processing times and will have this data available in the future.

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