

## California Proposes Positive Steps for Assisted Living

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California's Department of Social Services (DSS) recently took two steps to improve the state's assisted living regulatory system. Together, these steps may improve the state's monitoring/enforcement system and add needed health care competence. First, DSS offered trailer bill legislation to increase inspection frequency in assisted living facilities. Second, DSS appointed a registered nurse as Program Administrator of the Adult and Senior Care Program of DSS's Community Care Licensing Division.

### Weaknesses of Current System

DSS is the state agency responsible for oversight of California's 7,000 plus assisted living facilities, known as Residential Care Facilities for the Elderly (RCFEs). There is growing consensus that the RCFE regulatory system has not kept pace with the evolving needs of California's RCFE residents. California's aging population is increasing,<sup>1</sup> yet the state's RCFE system has weak oversight and does not adequately account for resident's health care needs.<sup>2</sup>

### Positive Step #1: Increase Frequency of Facility Inspections

The state must tighten its inspection cycle to adequately protect residents. Provider<sup>3</sup> and consumer advocacy groups<sup>4</sup> have long called on the state to make this urgently needed change. Currently, California's inspection process is one of the weakest in the nation. In the 1990s, the state routinely conducted annual inspections. Since 2004, however, in response to budgetary pressures, the state has moved to a once-every-five-years inspection cycle.<sup>5</sup> In 2010, DSS added a "key indicator" inspection system. Under this system, the state annually inspects at least 20 percent of facilities, with the remainder of facilities on the five-year cycle.<sup>6</sup>

Other states' regulatory agencies generally conduct much more frequent inspections. According to a Justice in Aging study,<sup>7</sup> the nationwide trend for inspection frequency is at least once every two years. Several of the

- 1 California Department of Aging, *Facts About California's Elderly*, [https://www.aging.ca.gov/Data\\_and\\_Statistics/Facts\\_About\\_Elderly](https://www.aging.ca.gov/Data_and_Statistics/Facts_About_Elderly).
- 2 Justice in Aging, *Making Up For Lost Time: Addressing Problems in California's Assisted Living System* (Nov. 2014), [http://justiceinaging.org/wp-content/uploads/2015/03/RE\\_Address-Addressing-Problems-in-Californias-Assisted-Living-System.pdf](http://justiceinaging.org/wp-content/uploads/2015/03/RE_Address-Addressing-Problems-in-Californias-Assisted-Living-System.pdf).
- 3 California Assisted Living Association, *California's Highly Regulated Assisted Living Communities Could Be Strengthened by More Frequent Licensing Inspections* (June 2013), [https://caassistedliving.org/pdf/public\\_policy/cala\\_position\\_frequent\\_inspections.pdf](https://caassistedliving.org/pdf/public_policy/cala_position_frequent_inspections.pdf).
- 4 California Advocates for Nursing Home Reform (CANHR), *Residential Care in California: Unsafe, Unregulated & Unaccountable* (2013), [http://www.canhr.org/reports/Residential\\_Care\\_in\\_California.pdf](http://www.canhr.org/reports/Residential_Care_in_California.pdf).
- 5 *Id.*
- 6 Cal. Health & Safety Code § 1569.33.
- 7 Justice in Aging, *Best Practices in Assisted Living* at 39.

reviewed states require inspections more frequently. For example, several states require at least one unannounced inspection at least every 18 months, with the statewide average interval of inspections not exceeding 15 months.<sup>8</sup>

DSS is proposing to phase in an annual inspections process. Under a trailer bill put forward by DSS,<sup>9</sup> in 2017, DSS would inspect RCFEs at least once every three years. In 2018, the inspection frequency would be increased to at least once every two years. By 2019, DSS would conduct annual unannounced inspections of all RCFEs.

## Positive Step #2: Bring Health Care Competencies into RCFE System

As a longer term goal, California should incorporate health care competencies into the assisted living regulatory system.<sup>10</sup> The RCFE system was created 30 years ago on the assumption that residents needed relatively little assistance. Today, however, California's assisted living facilities house many residents with significant needs for ongoing health services. Regardless, DSS has had almost no health care expertise in its staff.

In a recent leadership appointment, DSS took a proactive step in introducing health care expertise to the regulatory staff. On May 27, Pam Dickfoss, Deputy Director of DSS' Community Care Licensing Division, announced the appointment of Ley Arquisola as Program Administrator over the Adult and Senior Care Program.<sup>11</sup> Ms. Arquisola is a registered nurse, and in her previous state position (at the Licensing & Certification Division of the Department of Public Health) she provided direction to nurse evaluators conducting investigations in healthcare facilities.

In announcing the appointment, Deputy Director Dickfoss intimated Ms. Arquisola's appointment may be a step in a broader initiative to recognize health care needs in RCFEs. She stated that Ms. Arquisola's previous health care oversight is "very analogous to what is desired in this position and her qualification as a registered nurse will complement the guidance provided to the field staff confronted daily [with difficult issues], given the medically fragile residents in adult and senior care communities."

Justice in Aging welcomes DSS's initiatives to address facility quality and health care services.

*Development of this issue brief was funded in part by the California HealthCare Foundation, based in Oakland, California. Justice in Aging thanks the Foundation for its assistance. This issue brief is the fourth in a series. The series explores how California's RCFE system addresses residents' health care needs, and how the system could be modified to better serve residents. With any questions or suggestions, please contact Eric Carlson ([ecarlson@justiceinaging.org](mailto:ecarlson@justiceinaging.org)) or Fay Gordon ([fgordon@justiceinaging.org](mailto:fgordon@justiceinaging.org)).*

<sup>8</sup> Kansas requires at least one unannounced inspection every 15 months, but also requires that the statewide average between inspections not exceed 12 months. Kan. Stat. Ann. §§ 39-933, 39-935. New York requires one unannounced inspection no less than annually, but for facilities receiving the state's highest rating, the law extends that period to at least once every 18 months. Both states allow for agency discretion to require more frequent inspections. N.Y. Comp. Codes R. & Regs. Tit. 10, § 1001.15; N.Y. Comp. Codes. R. & Regs. Tit. 18, 3461-a.

<sup>9</sup> See <http://justiceinaging.org/wp-content/uploads/2015/06/DSS-Trailer-Bill-Language.pdf>.

<sup>10</sup> See, e.g., Justice in Aging, *How California's Assisted Living System Falls Short in Addressing Residents' Health Care Needs; The Problem: A False Choice Between Community Living and Access to Health-Related Services* (March 27 2015), [http://justiceinaging.org/wp-content/uploads/2015/04/RE\\_FINALCA-Assisted-Living-System-False-Choice.pdf](http://justiceinaging.org/wp-content/uploads/2015/04/RE_FINALCA-Assisted-Living-System-False-Choice.pdf).

<sup>11</sup> See <http://justiceinaging.org/wp-content/uploads/2015/06/CCL-Arquisola-Announcement.pdf>.