California’s Highly Regulated Assisted Living Communities Could Be Strengthened by More Frequent Licensing Inspections

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Assisted Living communities, licensed as Residential Care Facilities for the Elderly (RCFEs) in California, are highly regulated with a robust body of laws and regulations governing the care and services provided, the training that staff receive, and the physical environment in which the services are offered. The California Department of Social Services, Community Care Licensing Division (CCLD) enforces these laws and regulations through the initial licensing process and periodic inspections. The regulatory framework is designed to promote resident independence and self-direction to the greatest extent possible in a residential, nonmedical setting.

The RCFE regulations, California Code of Regulations Title 22, Division 6, Chapter 8, include:

- Acceptance and retention criteria
- Activities
- Administrator qualifications
- Admission agreements
- Criminal background checks
- Dementia care
- Disaster planning
- Eviction procedures
- Food service
- Health-related services
- Hospice care
- Medication management
- Relocation process
- Resident rights
- Staff training

In addition to the above regulations, the RCFE Act establishes additional statutory standards and requirements in many of the same areas. Although the state has fallen behind in updating the regulations to reflect new laws, the statutory requirements are in effect and being enforced throughout the state.

CALA Supports Increasing the Frequency of Licensing Inspections

While the Assisted Living regulatory framework is well established, California’s budget situation has led the state to reduce the frequency of licensing inspections against the objections of Assisted Living providers and consumer groups. Here is a summary of legislative and budget activity related to RCFE licensing inspections:

Brief History of Licensing Inspection Frequency

2011

- AB 419 (Mitchell) would have strengthened enforcement by ensuring inspector presence in all licensed communities at least annually. Specifically, it would have required annual unannounced inspections using an updated inspection protocol (“key
indicator inspection process”) and updated inspection types, funded in part by a 10% increase in licensing fees. This bill failed in Assembly Appropriations. **CALA supported increasing inspections as proposed by AB 419.**

2010-2011 Budget

- CCLD Budget Proposal sought to accomplish much of what was ultimately proposed in AB 419. The Legislature directed CCLD to pursue legislation rather than use the budget process. **CALA supported increasing inspections as proposed through the 2010-2011 budget.**

2009-2010 Budget

- **CALA advocated for biennial inspections funded by a 20% licensing fee increase.** Discussions stalled over concerns about long-term personnel and retirement costs.
- The May Revise would have eliminated all General Fund support for CCLD offset by program reductions and an 80% licensing fee increase. This would have eliminated random and annual inspections for all facility types. **CALA strongly opposed these program cuts,** which were ultimately rejected by the Legislature.

2008-2009 Budget

- Governor’s Budget Proposal would have cut inspections from 30% random sample and five-year safety net to 14% random sample and seven-year safety net (see below for descriptions of inspection types). **CALA strongly opposed this proposal to cut inspections** and it was ultimately rejected by the Legislature.

**Types of Inspections**

There are a variety of inspection types dictated by statute:

- **30% random sample inspection:** 30% of licensed RCFEs are selected randomly each year, with a safety net to ensure no RCFE goes more than five years without an inspection.
- **Pre-licensing inspections:** intended to ensure a community is prepared to accept residents, but are also applied to existing, currently operating communities when ownership is changing. This means that the required pre-licensing inspection is conducted based on the outgoing licensee even though they have nothing to do with the applicant licensee. According to CCLD, the state spends $349,000 and 5.5 staff members to conduct approximately 1,800 inspections when an existing, already licensed facility (all license types, not just RCFEs) is changing ownership. CCLD proposed to eliminate these inspections in 2010 and 2011.
- **Post-licensure inspections:** mandated to occur 90 days after issuance of license and residents in care
- **Complaint investigations:** mandated to begin within 10 days of receipt of a complaint
- **Annual unannounced comprehensive inspections for a facility on probation or with an ongoing plan of correction**
- **As needed case management inspections** typically in response to an incident report or unusual occurrence
Method of Inspections
CCLD recently began using a “key indicator inspection process” that includes a complete walk-through of the facility and a focus on previously identified key health and safety risk indicators intended to predict the overall propensity for compliance. If a community is found to be out of compliance with key indicators, a comprehensive inspection is initiated. Any violation observed during the inspection, whether on the “key indicator” tool or not, is cited. According to CCLD, this approach is being used in other states, including Pennsylvania, Wisconsin, and New York, among others, and is supported by research. This approach promises to deliver efficiencies that should enable the department to conduct more frequent inspections.

Strengthening Oversight in California
CALA supports a return to comprehensive annual inspections, although we recognize that the state’s fiscal reality makes this unlikely in the short term. What can be accomplished, however, are significant incremental improvements.

There is a legislative effort underway to require inspections of RCFE and other community care facilities once every two years. CALA strongly supports AB 364 (Calderon) and biennial inspections of Assisted Living communities. Although this bill is stalled in the Assembly Appropriations Committee due to an estimated $7 million cost to the state, the discussion will continue.

The state can ensure all Assisted Living communities are inspected at least once every three years by moving immediately to a rational inspection selection process instead of the current random system. This would maintain annual unannounced inspections of 30% of licensed communities, but eliminate the “random” selection process. Current resources already support inspections of 30% of licensed communities, but some communities may be left off the inspection list simply because they don’t get pulled in the random selection process. The five-year safety net inspections are intended to address this. By moving to a 30% inspection schedule with a rational selection process instead of a random selection process, no community would go without an inspection for more than approximately three years. There should be no additional cost to the state since the number of inspections would remain the same.

Regardless of the mechanism we use to get there, progress must be made toward increasing the frequency of licensing inspections. CALA remains committed to working with stakeholders to strengthen California’s inspection schedule.