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(Via Electronic Mail Chelsea.driscoll@cdph.ca.gov & U.S. Mail)

Chelsea Driscoll
Chief, Policy and Enforcement Branch
Department of Public Health, Licensing and Certification Program
MS 3203, P.O. Box 997377
Sacramento, CA 95899-7377

RE: Comments on SB 97 Implements Regulations

Dear Ms. Driscoll,

Thank you for the opportunity to provide initial thoughts about emergency regulations implementing Senate Bill 97 (SB 97). As was expressed at the meeting on August 1st, we were surprised to learn about the change in the law regarding minimum staffing requirements for direct care staff in skilled nursing facilities. As you know, the quality of care residents receive is directly correlated to adequate staffing levels, including hours provided by licensed nurses.

While SB 97 increases the minimum number of direct care service hours, Disability Rights California is concerned that this statute will, in fact, result in a reduction of direct care service hours by trained clinical staff and leaves a gapping loophole for facilities who chronically fail to meet this requirement without repercussion. We offer the following recommendations to consider when drafting emergency regulations.

I. Establishing Minimum Licensed Nursing Hours

Unlike previous state law, SB 97 does not set a minimum number of direct care service hours that must be provided by a licensed nurse. Prior to adoption of SB 97, at least 1.3 per patient day of direct care service hours had to be provided by licensed nurses. Disability Rights California encourages the Department to adopt regulations that, similarly, set a minimum number of direct care service hours that must be provided by licensed nurses and that the required number of hours not be less than the previous requirements.

II. Limiting the Number of Direct Care Service Hours Provided by Student Nursing Assistants

Disability Rights California is concerned that the definition of direct caregiver includes nursing assistants in training programs. These students have limited direct care experience, if any. Student nurses are not counted in the staffing levels in hospitals. Disability Rights California believes that student nursing assistants should similarly not be counted in the direct care service hours in skilled nursing facilities.

We recommend that the number of hours provided by student nursing assistants be limited. Without further clarifying regulations, up to 30% of the direct care service hours could be provided by nursing assistant students and the remainder provided by certified nurse assistants. Disability Rights California recommends that the Department adopt regulations that limit the maximum number of direct care service hours provided by nursing assistants in training or prohibit including trainees entirely in the new 3.5 hours per patient day direct care service hour requirement. Furthermore, we recommend that the Department clearly prohibit including trainees in the requirement to provide 2.4 certified nurse assistant hours per resident day.

III. Establishing Standards and Maximums for Waiver of Direct Care Service Hour Requirements

While acknowledging the new statutory language, Disability Rights California is strongly opposed and gravely concerned about the provision

in SB 97 that permits the Department to create a waiver of the direct care service hour requirements in the case of staffing shortages. This loophole undermines the very purpose of setting minimum staffing requirements and supports or endorses a facility's continuing inability to recruit and retain sufficient numbers of direct care staff to provide for their residents.

SB 97 suggests that the waiver of the direct care service hour requirements will be awarded for a one year period and could extend indefinitely for years. Disability Rights California strongly opposes any waiver lasting longer than a few months or waivers that can be renewed without limit. If a facility is unable to maintain sufficient staffing to meet the statutory 3.5 direct care service hour per patient day requirements for any extended duration, the facility should be required to implement preliminary steps to reduce its census, such as not accepting new resident admissions, until the facility has restored staffing to statutory requirements rather than be permitted to operate with insufficient staffing to care for existing residents.

Disability Rights California encourages the Department to adopt regulations that limit the number of waivers that may be granted to a facility in a five year period and to prohibit renewal of any individual waiver more than once. Despite the language of SB 97, Disability Rights California recommends that the Department limit the duration of a waiver to a time period of four months. Furthermore, we request that the Department track and make publically available the list of waivers granted by facility corporate ownership, in addition to facility name.

Disability Rights California also encourages the Department to adopt standards by which an initial waiver and a waiver renewal are granted. Standards by which a waiver is renewed should be at least as strict, if not more rigorous, than first-time waiver requirements. Such standards must include evidence of good faith efforts made by a facility to recruit and retain quality direct care staff. A facility's claim of shortages of available and appropriate health care professionals and direct caregivers in the community is insufficient without evidence of various efforts that the facility has exercised in attempting to recruit staff. If, in the end, a facility is truly challenged in maintaining sufficient staffing to meet the statutory 3.5 direct

care service hour requirement, it must reduce its census and not be permitted to continue on a waiver for years.

IV. Conclusion

Disability Rights California appreciates the Department reaching out to us and other stakeholders as you draft emergency regulations. My apologies for the delay in submitting these initial comments. Please do not hesitate to contact me if you have any questions or would like to discuss further our comments above.

Sincerely,



Leslie Morrison

cc: Scott Vivona