

**CALIFORNIA ADVOCATES FOR NURSING HOME REFORM**  
**&**  
**BET TZEDEK – THE HOUSE OF JUSTICE**

September 10, 2007

Governor Arnold Schwarzenegger  
State Capitol Building  
Sacramento, CA 95814

**RE: AB 399 (Feuer) – Urge your signature**

Dear Governor Schwarzenegger:

Should the California Department of Public Health (DPH) be required to complete investigations of nursing home abuse and neglect in a timely manner?

The California Legislature answered this question with a resounding "aye" by voting 117-1 for AB 399, an overwhelmingly popular bill that is awaiting your signature. AB 399 presents a common-sense solution to abuse and neglect of nursing home residents and an historic opportunity to restore integrity to California's nursing home complaint investigation system. AB 399 also is supported by dozens of organizations, the nursing home industry, consumer advocates, and citizens throughout California.

While no organization or individual is opposed to AB 399, the Department has raised concerns regarding its cost. As discussed below, AB 399 will actually save the state money. We urge you to protect California's most vulnerable citizens by signing this vital, universally-supported legislation into law.

**Neglect and Abuse a Growing Problem**

Shamefully, neglect and abuse are a fact of life for far too many of the more than 300,000 Californians who reside in nursing homes each year. Thousands of nursing homes residents suffer each year from preventable bedsores, dehydration, malnutrition, falls, avoidable injuries, unnecessary restraint, physical and sexual abuse, hospitalization and sometimes death.

In 2005, the most recent full year for which information is available, the Department received 21,388 complaints and reported incidents concerning nursing homes, nearly double the number filed in 2003. These reported complaints are merely the tip of the iceberg.

**The Investigation System is Broken**

The Department's failure to properly investigate complaints is extraordinarily well documented. Published reports by the California State Auditor, California HealthCare Foundation, U.S. Government Accountability Office (GAO), DHHS Office of Inspector General, California

Legislature, California Legislative Analyst's Office, Little Hoover Commission, and the media have identified the same problems over and over again. All of these respected sources expressed concern regarding slow investigations. Key public and private studies are summarized in the attached document.

Most recently, an April 2007 report by the California State Auditor found that the Department failed to timely complete more than 60 percent of 15,275 investigations conducted between July 1, 2004 and April 14, 2006. More than 500 complaints remained open for more than 400 days.

For nursing home residents, the broken investigation system is a matter of life and death. Investigation delays greatly impair the Department's ability to document neglect and abuse, allowing serious mistreatment to continue. If you are a mistreated nursing home resident, justice delayed often means no justice at all.

### **The Solution**

AB 399 is a very simple but powerful bill. With certain exceptions, it would require the Department to complete investigations of nursing home complaints within 40 working days, no matter whether the abuse or neglect is filed by a member of the public or self-reported by a nursing home. AB 399's mandate closely matches the Department's current policies and procedures, evidencing further the universal administrative, legislative, industry, advocate, and consumer support for timely complaint investigations.

Subjecting residents to continued neglect or abuse after it has been reported to public officials is simply unacceptable. Timely investigation of complaints will help prevent further mistreatment. It will also help ensure that DPH findings are fair, accurate, and efficient, because they will be conducted and completed while evidence is readily available and still fresh.

Timely investigations are achievable. The 2006 Budget Act awarded Licensing and Certification more than \$18 million to hire more than 141 new employees, plus \$2.7 million for LA County to hire 18 new nurse inspectors. Overall, it increased Licensing and Certification's professional inspector staff by almost one-third. The Legislature clearly expected Licensing and Certification to use these funds to meet its investigation duties in a timely manner.

### **Timely Investigations Save Money**

AB 399's sponsors worked very closely with Department officials in drafting the bill, and tailored its language to address the Department's concerns. Although the Department has not taken an official position against the bill, it has advised us that it has concerns about the bill's cost. Its most recent fiscal estimate mistakenly claims that AB 399's implementation costs exceed \$6 million per year.

The Department's fiscal estimate is not supported by the facts, and was rejected by both the Assembly and Senate Appropriations Committees. It costs less money, not more, to investigate complaints promptly while evidence is fresh and witnesses are available.

The fiscal estimate reveals the actual problem. Licensing and Certification's nursing home complaint workload has grown by almost 25 percent since it last adjusted its budget and workload projections. Under current law (H&S Code §1266), the Department is obligated to adjust facility licensing fees to fund the necessary investigative duties. Due to the increased workload, the Department must adjust its budget accordingly or the quality and timeliness of complaint investigations will continue to suffer.

It is fiscally erroneous to charge the cost of a growing complaint workload to AB 399. The bill has nothing to do with the increased complaint workload and does not establish the underlying obligations to investigate reports of abuse and neglect. Existing laws require L&C to investigate reports of abuse and neglect and are the true source of the costs identified in the fiscal estimate.

### **Your Leadership Needed**

As California's Governor, we look to you for leadership in setting a new course for the Department of Public Health. By signing AB 399 into law, you will establish an urgently needed solution to a long-standing, growing problem. We urge you to join countless Californians who want to protect nursing home residents from abuse and neglect, and to fix this problem, once and for all.

Thank you for considering our views. We look forward to working with you and your administration to implement this vital legislation.

Sincerely,

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Attachments

## **Organizations Supporting AB 399 (Feuer)**

Bet Tzedek Legal Services (co-sponsor)  
California Advocates for Nursing Home Reform (co-sponsor)  
AARP California  
Advocacy, Inc.  
AFSCME  
Aging Services of California  
Alzheimer's Association, California Council  
Alzheimer's Association, California Southland Chapter  
Association of California Caregiver Resource Centers  
California Alliance for Retired Americans  
California Long Term Care Ombudsman Association  
California Senior Legislature  
California State Association of Counties  
Congress of California Seniors  
El Dorado County Commission on Aging  
Friends to the Elderly, JFS LA  
Gray Panthers California  
Jewish Family Services of Los Angeles  
Marin County Commission on Aging  
Napa Long Term Care Ombudsman  
National Multiple Sclerosis Society  
National Senior Citizens Law Center  
Ombudsman & HICAP Services of Northern California  
Ombudsman Services of San Mateo County, Inc.  
Protection & Advocacy Inc.  
San Francisco IHSS Public Authority  
San Francisco Senior Center  
WISE Senior Services

## **Organizations Opposed to AB 399**

None

## **An Overview of California's Broken Nursing Home Investigation System**

The failures of the DHS nursing home complaint investigation system are well documented and date back to at least the early 1990s, when the Little Hoover Commission expressed concern about them in its April 1991 report, *Skilled Nursing Homes, Care Without Dignity*. The Little Hoover Commission recommended that DHS be directed to investigate and respond to complaints promptly and to keep complainants informed of all steps taken. Unfortunately, investigation practices did not improve and problems continue today.

On March 8, 2006, California's Joint Legislative Audit Committee ordered an audit of the DHS Licensing and Certification Division. The Chairs of the Senate Health Committee and the Subcommittee on Aging and Long-Term Care requested the audit due to "some deeply troubling deficiencies and breaches" in the nursing home oversight system identified during the oversight hearings.

The California State Auditor issued her report in April 2007, concluding that DHS has not consistently followed state and federal laws and its own policies governing the oversight process. Concerning complaint investigations, she reports that DHS has struggled to investigate and close complaints promptly and make timely communications with complainants. Specifically, she found that DHS failed to timely complete more than 60 percent of 15,275 investigations conducted between July 1, 2004 and April 14, 2006. More than 500 complaints remained open for more than 400 days.

Earlier in 2007 the California Healthcare Foundation issued a report stating the DHS complaint substantiation rates dropped from 41 percent in 2000 to 16 percent in 2005, meaning less than one in six complaints result in any action. See *The Changing Face of California's Nursing Home Industry*, California HealthCare Foundation, 2007.

Repeated studies by the U.S. Government Accountability Office (GAO) have found problems with California's nursing home complaint investigation and oversight systems. See, for example: *Nursing Homes: Efforts to Strengthen Federal Enforcement Have Not Deterred Some Homes from Repeatedly Harming Residents*, GAO-07-241, March 2007; *Nursing Homes: Despite Increased Oversight, Challenges Remain in Ensuring High-Quality Care and Resident Safety*, GAO-06-117, December 2005; *Nursing Home Quality: Prevalence of Serious Problems, While Declining, Reinforces Importance of Enhanced Oversight*, GAO-03-561, July 17, 2003; *Complaint Investigation Processes Often Inadequate to Protect Residents*, GAO/HEHS-99-80, March 1999; *California Nursing Homes: Federal and State Oversight Inadequate to Protect Residents in Homes with Serious Care Problems*, GAO/T-HEHS-98-219, July 28, 1998; and *California Nursing Homes: Care Problems Persist Despite Federal and State Oversight*, GAO/HEHS-98-202, July 27, 1998.

In July 2006, the U.S. Department of Health and Human Services' Office of Inspector General issued a report, *Nursing Home Complaint Investigations (OEI-01-04-00340)*, which found state survey agencies generally neglected their duties to send nursing home complainants meaningful information about investigation findings.

In May 2006, California Advocates for Nursing Home Reform issued a report, *Nursing Home Abuse and California's Broken Enforcement System*, that describes serious abuses suffered by California nursing home residents, which it partially attributed to California's failing nursing home oversight system. It cites federal data from the Center for Medicare and Medicaid Services that shows DHS onsite complaint investigations averaged 4.1 hours in 2005, less than half the national average of 9.29 hours per investigation.

In its February 23, 2006 *Analysis of the 2006-07 Budget Bill*, the Legislative Analyst's Office (LAO) reported that California's nursing home oversight system suffers from serious weaknesses. It reported a significant reduction in the timeliness of investigations related to incidents that are self-reported by nursing homes. AB 399 would correct this problem.

The Senate Health Committee and its Subcommittee on Aging and Long-Term Care held two hearings on problems with nursing home oversight in California on July 20, 2005 and November 4, 2005. Both hearings addressed concerns about DHS complaint investigation practices.

In October 2005, California Advocates for Nursing Home Reform and the daughters of two victims of elder neglect sued DHS for its failure to comply with H&S Code section 1420's requirement that it begin complaint investigations within 10 working days. Based on evidence that DHS fails to timely investigate complaints more often than not, in September 2006 the California Superior Court issued a writ requiring DHS to comply with the law and to investigate its backlog of almost 1,400 complaints, some dating back to 2003.

Nationally respected researchers at UCSF reported in late 2004 that DHS did not investigate complaints in a timely manner. According to the report, DHS data showed that 38 percent of its nursing home complaint investigations were completed after their due date. On average, complaint investigations were not completed until more than three months after the due date. See *Report on California's Nursing Homes, Home Health Agencies, and Hospice Programs*, Harrington, C., & O'Meara, J., December 2004, prepared for the California HealthCare Foundation.

California media have frequently addressed concerns about nursing home oversight and poor investigation practices. See, for example, *State's Nursing Home Licensing Unit Too Slow, Audit Finds*, Press Enterprise, April 12, 2007; *Nursing Home Review Critical: Auditors Say State Overseers Failed to Gauge Problems Well and Respond Quickly*, Sacramento Bee, April 13, 2007; *Judge Orders State to Speed up Probes of Nursing Homes*, Mercury News, September 13, 2006; *Nursing Home Care Oversight Riles Officials*, Sacramento Bee, February 18, 2006; *California Understates Problems at Nursing Homes*, Los Angeles Times, January 26, 2006; *Nursing Home Scrutiny Lagging*, Los Angeles Times, July 31, 2005; *Health Department Sued to Force Adherence to Law*, Mercury News, October 19, 2005; *Complaints About Nursing Homes Can Sit for Months*, Ventura County Star, April 11, 2004.