State of California

Little Hoover Commission

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THE SNAIL'S PACE OF REFORMING RESIDENTIAL CARE FACILITIES FOR THE ELDERLY

Commission on California State Government Organization & Economy

LITTLE HOOVER COMMISSION

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February 13, 1991

The Honorable Pete Wilson
Governor of California

The Honorable David Roberti
President Pro Tempore of the Senate
and Members of the Senate

The Honorable Kenneth L. Maddy
Senate Minority Floor Leader

The Honorable Willie L. Brown, Jr.
Speaker of the Assembly
and Members of the Assembly

The Honorable Ross Johnson
Assembly Minority Floor Leader

Dear Governor and the Legislature:

Despite years of investigations and legislative changes, the fate of elderly Californians who leave their homes to live in residential care facilities remains uncertain at best. The affluent or the lucky may find a well-run facility; unfortunately, those whose means are limited may instead be relegated to facilities that do not meet state standards and that are neither safe nor comfortable.

The Little Hoover Commission has tracked the State's performance in ensuring the quality of facilities since 1983, and while some improvements have been made, problems persist. In particular, the pace of regulations--and therefore reform itself--has lagged far behind statutory changes that have been brought about through the legislative process. In some cases, implementation of regulations has taken more than five years after a bill was signed into law. In addition, the State has failed to crack down on unlicensed facilities in an expeditious manner.

This letter report is designed to assess the changes that have been made in response to previous Commission reports and recommend a future course of action. The Commission believes this report builds a strong case for shifting the state's emphasis from reform to enforcement; in essence, the State needs to devote more resources to carrying out the mandate of existing state laws through stronger enforcement efforts and speedier adoption of regulations.

Background

Residential care facilities occupy an important niche in the continuum of care for the state's elderly. At one end of the continuum, when an elderly person begins to need assistance, such care may be provided on a part-time basis in the person's home. At the far end of the continuum, an elderly person may need the round-the-clock medical assistance that is found in skilled nursing facilities. Residential care facilities, also known as board and

care homes, represent a middle ground of care. The person leaves his or her own home to reside in the facility, where a safe environment and assistance with meals, grooming and other non-medical needs is assured. But some level of independence remains, with the person free to come and go.

A 1987 survey by the National Association of Residential Care Facilities identified 41,000 facilities housing 563,000 residents throughout the country. In California, the Department of Social Services licenses 4,073 residential care facilities for the elderly with enough capacity to house 93,601 residents.

These national and state figures, however, fail to take into account the large number of persons who may reside in homes that operate without licenses. A 1982 U.S. Department of Health and Human Services report estimated that one in six facilities in the nation is unlicensed. If that proportion holds true at the state level, California has approximately 700 unlicensed facilities that are home to an additional 16,000 elderly.

While an accurate number for residential care facilities is difficult to determine, it is clear the need for such facilities is growing. In addition to having the largest population of any state in the nation, California also has the country's largest number of those aged 60 and over. According to the California State Plan on Aging 1989-1993, the 60-plus population in 1989 totalled 4,378,300, or just over 15 percent of California's 28,314,800 total population. A little more than 70 percent (3,090,500) of the 60-plus population were between 60 and 74, almost 23 percent (999,400) were 75 to 84 and the remaining 7 percent (288,400) were 85 and above.

This substantial portion of the State's population is expected to increase dramatically. In the 40-year span from 1980 to 2020, the 60-plus population will more than double, going from 3,421,700 to 8,675,500. During that same time span, the over-85 group is expected to almost triple, going from 219,000 to 620,700. Overall, the elderly are expected to represent 22 percent of the State's population in the year 2020.

As this sector of the population booms, greater and greater demands are expected to be placed on the State's resources to meet their needs. This growing demand coupled with limited resources makes it clear that it is to the State's advantage to meet those needs in an economically and socially responsible manner. On the continuum of care, residential care facilities are more economical than skilled nursing facilities if an individual's health problems do not require constant medical care.

The State has an interest, therefore, on beyond safeguarding the welfare of individual elderly citizens, in ensuring that residential care facilities provide quality care to individuals so that they can remain at this economical level of care for as long as possible. The state department with the primary responsibility for the licensing, regulating and monitoring of residential care facilities is the Department of Social Services.

Little Hoover Commission Involvement

The Little Hoover Commission began investigating the problems in residential care facilities in 1983 and has continued to address the role of the State in addressing those problems in a series of reports: "Community Residential Care in California: Community Care as a Long-Term Care Service," December 1983; an untitled letter review, February 1985; and "Report on Community Residential Care for the Elderly," January 1989.

Between the three reports, the Commission advanced 17 recommendations for changes, including:

* Providing for better integration of the residential care option into the continuum of long-term care by clarifying state roles and policies and improving consumer information.

* Increasing and strengthening monitoring of facilities.

* Making enforcement activities more uniform and effective.

* Creating new sources of funding through assessment of licensing fees and solicitation of private donations to improve the quality of residential care facilities.

* Certifying residential care facility administrators.

* Authorizing counties, at their option, to license small residential care facilities and provide placement assistance.

* Organizing a focused effort to detect and eliminate unlicensed facilities.

* Strengthening protections for residents' rights.

* Developing protocols for emergency services coordination when facilities are closed.

* Fine-tuning fire safety regulations so that they are compatible with the needs of residential care facilities but still safeguard residents.

* Upgrading the information management capabilities of the Department of Social Services.

* Creating special categories of residential care facilities to meet special needs, such as locked facilities for those who are suffering from forms of dementia.

In the seven years since the 1983 report, 30 bills sponsored by the Commission were signed into law to fulfill various portions of the 17 recommendations in the reports. **Appendix A** is a capsule summary of each of the 30 statutes.

In general, the Little Hoover Commission-sponsored laws require the State to take a more activist role in licensing, monitoring and regulating residential care facilities. In addition, they outlawed the operation of unlicensed facilities and required placement agencies to use only licensed facilities. Fines and other enforcement mechanisms were strengthened under several of the laws, and others provided for better education and training of the people running residential care facilities. Still other laws provided for more thoroughly informing consumers about their right of access to records about facilities and about available protections for the rights of residents.

As the 1989-90 legislative session, which gave birth to 16 of the 30 laws, drew to an end, the Little Hoover Commission recognized the need to assess how far the State had moved in resolving problems in light of the laws passed since its 1983 report. After conducting a public hearing in September 1990 and interviewing advocates for the elderly, representatives of the

Department of Social Services and other experts, the Commission reached the conclusions detailed below.

Findings

FINDING 1: The Department of Social Services has not created regulations at a fast enough pace to keep up with legislative changes regarding residential care facilities.

While the Governor and the Legislature have been responsive to the need for reforms in residential care facilities, bills that have been passed and signed into law over the past seven years have in many cases taken years to be put into effect by the Department of Social Services (Department). This has caused a substantial lag between the time problems are recognized and addressed by those in charge of setting state policy and the time solutions are actually implemented. Not only does this mean that reforms are not instituted in a timely manner, but it also gives rise to conflict and confusion when additional legislation is passed before much older laws have been implemented.

For the most part, laws actually have little impact until they are enforced by the State. In many cases, regulations setting up specific procedures and standards must be created before a law can be enforced.

Under the State's Administrative Procedure Act, regulations to carry out the intent of laws can only be implemented after a process that includes the filing of a notice of the proposed adoption of a regulation, the conduct of public hearings or solicitation of public comment, the consideration of revisions based on public input, evaluation by the Office of Administrative Law (OAL) and the filing of the approved regulation with the Secretary of State. On a non-emergency basis, this process can take about a year.

In the case of laws affecting residential care facilities, however, the creation of regulations has routinely taken two and one-half to three years and in some cases more than five years. These figures are based on interviews with Department of Social Services officials and on an examination of activities pursued by the Department following the passage of each of the 30 bills sponsored by the Little Hoover Commission. While the majority of those measures could be enforced through other mechanisms, 14 required the creation of regulations, according to the Department.

The chart on the next page shows for the 14 statutes the elapsed time in months between the effective date cited in the statute and the implementation of regulations. Statutes highlighted are discussed in more detail following the chart. **Appendix B** contains the Department's outline of each of the 14 statutes and the regulatory activity the Department has pursued.

TIME TAKEN TO CREATE REGULATIONS FOR 14 RESIDENTIAL CARE LAWS

Statute	Effective Date of Law	Effective Date of Regulation*	Elapsed Time in Months
Chap. 1272, 1984	1/1/85	12/86	23
Chap. 1096, 1985	1/1/86	9/87	21
Chap. 728, 1985	1/1/86	9/88	33
Chap. 954, 1985	1/1/86	1/88	24
Chap. 1536, 1985	1/1/86	7/88	30
Chap. 1372, 1985	1/1/86	1991**	60+
Chap. 1415, 1985	1/1/86	9/88	32
Chap. 1127, 1985	1/1/86	6/92	78
Chap. 565, 1989	1/1/90	6/92	30
Chap. 458, 1989	1/1/90	1/92	24
Chap. 465, 1989	1/1/90	1/92	24
Chap. 911, 1989	1/1/90	6/92	30
Chap. 466, 1989	1/1/90	1/92	24
Chap. 1115, 1989	1/1/90	1992***	24+

* Future effective dates listed are based on Department of Social Services projections of when regulations will be submitted to the Department's internal Regulations Development Bureau. Since the bureau has estimated that it takes a year to 18 months for a regulation to become final once it reaches them, 12 months were added to the Department estimate to arrive at an estimated effective date.

** Regulations were submitted to the OAL in 1990; implementation should occur sometime in 1991.

*** This omnibus legislation is giving rise to nine different sets of regulations that are expected to be completed at different times, most in 1992.

Source: Department of Social Services

As the chart above indicates, the implementation of regulations lagged behind the effective date of statutes anywhere from 21 months to 78 months (six and one-half years). The law that took the least amount of time to implement, Chapter 1096 of the Statutes of 1985, had several requirements, only one of which required regulations, according to the Department of Social Services. That portion of the law required residential care facility licensees to keep a current register of residents with specific client information. To delineate how the register should be kept, Sections 87571 and 80071 were added to California Code of Regulations Title 22, Division 6, 21 months after the effective date of the statute.

The law in the chart that took the longest to implement, Chapter 1127 of the Statutes of 1985, was an omnibus Residential Care Facilities for the Elderly Act with almost a dozen different requirements. While some regulations based on this law were adopted in 1986, the Department has indicated that "clean-up" regulations to address at least one portion of Chapter 1127 (the ability of facilities for the elderly to house persons under the age of 60 if their needs are compatible) will be submitted to the Department's Regulations Development Bureau by June 1991. If the remaining regulatory process is completed in a timely manner, this would mean the regulations will be issued more than six years after the law was enacted.

Another law noted on the chart was of particular interest to the Little Hoover Commission when it was in the process of researching and writing its January 1989 report on residential care facilities. Chapter 1415 of the Statutes of 1985 allowed the Department to issue an immediate civil penalty of $200 per day for the operation of an unlicensed residential care facility if the operator refused to seek licensure when notified or if the application were denied and the operation continued. As the Commission's January 1989 report was being written, regulations had yet to be implemented and no fines under this law had been collected despite the passage of almost three years. At about the same time the Commission released its report and criticized the Department's inaction, the regulations were finally implemented.

Two other laws shown on the chart above illustrate another important point; new laws sometimes are passed before old laws pertaining to the same matters are even implemented. Chapter 1372 of the Statutes of 1985 required the Department of Social Services to develop a three-tier civil penalty system for community care facilities and residential care facilities for the elderly. The Department, which submitted regulations to the OAL in 1990, attributed the delay in creating the regulations to "the fact that the statute, as written, regarding three-tier civil penalties was extremely confusing and ambiguous." The five-year delay on the three-tier civil penalty system did, however, allow the Department to fold in increased civil penalties required in Chapter 1115 of the Statutes of 1989 before the regulations were sent to the OAL.

Similarly, portions of Chapter 1115 that dealt with transfer trauma relocation plans were added to regulations adopted in November 1990 that were based on another law dealing with transfer trauma that was passed more than three years ago.

The Department's slow response to laws is not limited to regulations. Chapter 552 of the Statutes of 1984 (with an effective date of January 1, 1985) required the Department to develop and make available to the public a consumer guideline brochure for community care facilities and residential facilities for the elderly. The consumer guide was first made available in August 1988, 44 months after the effective date of the statute.

In another example, Chapter 675 of the Statutes of 1989 (with an effective date of January 1, 1990) authorized all local prosecutors, rather than only district attorneys, to independently prosecute violations of laws and regulations affecting residential care facilities. The Department sent a letter to city attorneys informing them of the law's provisions in December 1990, almost a year after the law was enacted.

In a third example, Chapter 1096 of the Statutes of 1985 required the Department, among other things, to notify placement agencies and the Office of the State Long-Term Care Ombudsman of any serious violation by a residential care facility that results in the assessment of a penalty or causes an accusation to be filed for license revocation. Although the law became effective on January 1, 1986, it was not until 13 months later in February 1987 that material was added to the Evaluator Manual to set forth the procedures for notifying the agencies and the ombudsman.

Officials with the Department agree that the implementation of regulations is overly slow. The deputy director in charge of the Community Care Licensing Division attributes the problem to the overwhelming amount of statutes that have been passed during the last few years.

In addition to the blizzard of new laws that require regulations, Department officials have indicated that the Department is planning to overhaul and revise the entire range of existing regulations dealing with residential care facilities for the elderly so that they are more clear and concise. They also are planning a more active public involvement, through hearings and meetings, as regulations are drafted to ensure that they are feasible and practical. Since the Department has only four analysts developing regulations regarding residential care facilities for the elderly (and not all of them devote full time to this type of regulation), activists and advocates for the elderly fear that these laudable goals may further bog down the timeline for regulations.

The State's need to reduce growth in overall spending for the past several years has also sapped the Department's ability to respond quickly to legislative changes. Although the deputy director places the blame for regulatory slowness on the large amount of legislative activity rather than on a lack of departmental resources, he did say that budgetary constraints have caused the Department to leave more than 100 jobs vacant in the 800-job Community Care Licensing Division. This has hampered the Department's efforts to meet its current obligations, let alone develop regulations that impose new duties.

Because of lack of manpower, the Department is operating under a workload reduction plan that includes several levels of cutbacks in how the Department performs its duties. For instance, until the Department's budget allows more hiring the current policy allows for "modified" visits to facilities. Instead of a full-ranging inspection, a facility with no past record of problems or complaints gets a "focused" examination that takes far less time. The second level of the workload reduction plan, also now in effect, is that all licensed facilities will be visited only once a year, as statutes require, rather than twice a year as past budgets have allowed. Another level of cutback being used by the Department allows facilities to notify the Department by mail that they have corrected situations that led to "non-serious" violations--those that can be verified by paperwork and that do not involve imminent danger to residents. These reductions in the monitoring efforts and standards of the Department seriously undercut the State's role as the regulator of residential care facilities.

Despite the reality of the Department's strained resources, neither the State's elderly citizens nor its system of government are well served when bureaucracy becomes a quagmire for reform. Policy that is important enough to be set by the Legislature and the Governor should not languish unfulfilled for years. Enactment of laws should be followed by implementation of regulations in a timely manner, and then enforcement of those regulations.

Recommendation 1: The Department of Social Services should place top priority on completing regulatory packages for all laws that have been enacted as of January 1, 1991 and should report to the Governor and the Legislature on January 1, 1992 on the status of all necessary regulatory packages.

In an effort to allow the Department time to bring its regulations current with all laws that have been passed, the Governor and the Legislature may find it advisable to refrain from taking up new legislation on residential care facilities in the 1991-92 legislative session, except to meet any emergencies that may arise. If the Department is unable to demonstrate in its January 1, 1992 report that it has completed all regulatory packages, the Governor and the Legislature should consider budget control language that would force the Department to address this major concern.

FINDING 2: The Department of Social Services has failed to move quickly and effectively to stamp out unlicensed facilities, which are an ongoing threat to the health, welfare and safety of thousands of elderly citizens.

Although much has been accomplished in reforming policies and practices regarding residential care facilities, the Little Hoover Commission is struck by the fact that the same major problem can be cited year after year. The proliferation of unlicensed facilities and the failure of the Department of Social Services to institute a crackdown to weed out these typically substandard homes has been a key concern each time the Commission has issued a report.

In its December 1983 report, the Commission wrote:

> We found that the number of unlicensed community care facilities appears to be increasing, thereby posing a danger for unsuspecting community care clients. Budget cuts have led to Community Care Licensing's decision to target its investigative resources on responding to complaints in licensed facilities, leaving unlicensed facilities unmonitored altogether.

The report recommended that the definition of unlicensed facilities be clarified so that it would be easier to prosecute those who operate such facilities. It also recommended authorizing local law enforcement agencies to issue traffic-ticket type citations with fines to unlicensed facilities and requiring Community Care Licensing to treble fines for repeat violators. These recommendations, with the exception of the trebled fines, were enacted through Chapter 728 and Chapter 1415, both of the Statutes of 1985.

Nonetheless, more than five years later when the Commission issued its January 1989 report, the problem of unlicensed facilities loomed as large as ever. The report said:

> To date, the Department has done little to detect unlicensed facilities. That the Department does not keep centralized records of unlicensed facility investigations and case dispositions is indicative of the low priority assigned to unlicensed facilities.
>
> Another indication of the Department's inattention to this matter is the failure to produce periodically updated lists of licensed facilities for distribution to [hospital] discharge planners. The Department is not obligated statutorily to produce or distribute such reports. The Department's position is that the burden is on the individual discharge planner to call Licensing and inquire about individual facilities. In effect, discharge planners are not able to check licensing status efficiently before making placements, despite Chapter 1096/Statutes of 1985 which required placement agencies to place persons in licensed facilities only...

The report contained examples of abuses in unlicensed facilities that the Commission had received information about and cited the arrest for murder of the operator of an unlicensed facility in Sacramento where residents were found buried in the backyard.

A key recommendation of the 1989 report was that the Department should launch a well-coordinated campaign to detect and eliminate unlicensed facilities. The report outlined steps that should be taken in the campaign, including substantially increasing fines for unlicensed facilities; and enacting and publicizing a six-month amnesty period as a "carrot" to entice unlicensed

operators into the system, followed by the "stick" of an intensive effort to weed out any facilities that fail to apply for a license.

The Commission's recommendation to increase fines was achieved in Chapter 1115 of the Statutes of 1989 (the statute also increased fines for repeat violators as recommended in the 1983 report). However, the amnesty concept, which was attempted in two separate bills, failed to become law.

The Department has consistently opposed an amnesty program that would encourage unlicensed facilities to "come in from the cold." In testimony against the two bills, the Department based its opposition on three factors:

1. The Department maintained that unlicensed facilities are not a sufficient enough problem to warrant a special program. (Although no one has an accurate count of unlicensed facilities, as indicated in the Background section of this report, federal studies have estimated that one in six residential care facilities is unlicensed.)

2. The Department said that as of early 1989 they were already actively pursuing unlicensed facilities.

3. The Department also said it felt it would be too expensive to monitor all the additional facilities that would become licensed under an amnesty program.

In response to a Commission inquiry, the Department wrote in April 1990 that it was emphasizing the elimination of unlicensed facilities by reorganizing its 15 field offices into four regions as of January 1, 1990. Each region would have a Licensing Program Analyst "with specific responsibility for developing and implementing an aggressive plan" to eliminate unlicensed facilities. The letter further indicated that Community Care Licensing had begun recruiting to fill the four positions.

By January 1991, as this report was being written, the Department said that a person had been assigned in each region to focus on unlicensed facilities. The Department supplied a report from the Los Angeles Region on a 60-day test of the unlicensed facilities operation from April 16 to June 15, 1990 that called the project "a resounding success."

During the two-month period, Los Angeles' designated analyst received complaints about 136 unlicensed facilities, 48 of which were residential care facilities (complaints also included unlicensed day care facilities). Of the 48 residential care facility complaints, 18 were substantiated, 17 were unsubstantiated, seven required further actions and six were referred to investigative staff as "priority one" complaints (complaints that involve physical or sexual abuse or an unusual death). Ten of the 48 had a prior history of problems. The Department's report, which was intended to be a snapshot of the 60-day effort, did not include information about the final outcome of the 48 cases.

Several conclusions can be drawn from the above information. First, although the Department argued in legislative testimony that the problem of unlicensed facilities is not sufficient to warrant a special program, 48 complaints were received in just one region during a 60-day period. Since only 17 of those complaints were unsubstantiated, there is clear, if somewhat preliminary, evidence that unlicensed facilities are a major problem.

Second, the Department has been painfully slow to react to the problem of unlicensed facilities. Although unlicensed facilities were focused on by the Commission as early as 1983, it appears little effort was made by the Department until April 1990 (despite Department testimony that unlicensed facilities were being targeted early in 1989).

Finally, there is little evidence of deep commitment by the Department to resolve the problem. The Los Angeles pilot report can be described as enthusiastic about targeting unlicensed facilities, but its author notes at the end:

> I continue to view this position [the Licensing Program Analyst in charge of unlicensed facilities] as an excellent entry into the investigative unit. By October 1st, we will be on our third analyst in this position and I expect to see it continue to turn over periodically as staff are promoted.

Neither the classification of the job as an entry-level position nor the rapid turnover (three persons within less than 9 months) denote the high priority that the Commission believes needs to be placed on unlicensed facilities.

The Department's continuing reaction to another recommendation by the Commission also undermines the concept that the Department is committed to seeking out unlicensed facilities. Based on its 1989 report, the Commission sponsored legislation to give counties, at their option, the ability to license small residential care facilities, which by definition house six or fewer residents. This legislation, Chapter 488 of the Statutes of 1989, was designed to allow counties to have better control over facilities and to pursue the elimination of unlicensed facilities without waiting for the State to act.

While acknowledging the intent of the legislation, in two separate communications to the Commission the Department makes it clear that it will not allow counties to license residential care facilities. In its April 1990 letter to the Commission, the Department stated that because it already had the option of contracting with counties, no action was needed to implement the legislation. The Department further went on to state that there has been no change in Department policy that counties would not be allowed to license residential care facilities. This stance is reiterated on page 10 of the Department's legislative activity summary (please see **Appendix B**). "At this time, there are no plans to contract with counties to license Residential Care Facilities for the Elderly."

Although it appears the Department of Social Services has begun taking positive steps to detect unlicensed facilities, the Commission remains leery of both the effectiveness of the Department's methods and the depth of commitment that will be sustained over time.

> **Recommendation 2: The Department of Social Services should track its regional-office campaign against unlicensed facilities and report the results to the Governor and the Legislature by January 1, 1992.**

The Department should compile records in all four regions from July 1, 1990 through June 30, 1991 showing the number of complaints of unlicensed facilities received, level of investigative efforts, and final results for each facility involved and how the outcome affected the residents. These statistics should be reported to the Legislature by January 1, 1992 so that policy makers can determine if a more concentrated effort is required to address the problem of unlicensed residential care facilities. With a statistical record to examine, the Governor and the Legislature will be in a better position to determine if resources should be reallocated from other areas in order to

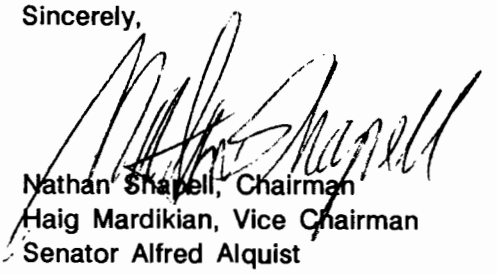
increase staffing if necessary to ensure that the Department can perform both its roles effectively: eliminating unlicensed residential care facilities and monitoring those facilities that are licensed.

Conclusion

The Little Hoover Commission believes that substantial progress has been made in many areas of reform for residential care facilities. But it is vital that the state concentrate its resources and efforts on enforcing existing laws and eliminating rogue facilities that refuse to comply with state standards. Although the State's fiscal situation is tight and there are multiple competing demands on these limited resources, the Governor and the Legislature may need to seriously consider increasing expenditures to regulate residential care facilities if the Department of Social Services is unable to meet the mandates of existing laws.

In most cases, the letter of the law regarding residential care facilities is now adequate. But the spirit behind the law has yet to be uniformly felt throughout the State; as a consequence, many elderly Californians are still in danger and need the State's best protective efforts.

Sincerely,



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APPENDIX A

Summary of Little Hoover Commission Legislation on Residential Care Facilities

Statutes of 1984:

Chapter 1524 (AB 3474/Wyman)	Establishes automated license information system to maintain records on facilities.
Chapter 1272 (AB 3589/Mojonnier)	Permits residents of community care facilities to organize resident councils.
Chapter 1623 (AB 3662/Filante)	Creates a 24-hour hotline for complaints to the State Long-Term Care Ombudsman.
Chapter 1206 (AB 3839/Rogers)	Authorizes Ombudsman to form a foundation eligible for tax deductible donations.
Chapter 552 (AB 3906/Allen)	Requires publication of a consumer brochure for licensed community and residential care facilities.
Chapter R133 (ACR 133/Allen)	Directs Department of Social Services to attempt to develop Yellow Page listings for community care facilities according to major group served.

Statutes of 1985:

Chapter 1096 (AB 17/Wright)	Requires placement agencies to place persons only in licensed facilities.
Chapter 503 (AB 83/Herger)	Requires community care facilities to adhere to the rules for all "long-term care facilities."
Chapter 728 (AB 384/Filante)	Prohibits operation of unlicensed community care facilities in the State.
Chapter 954 (AB 1539/Seastrand)	Encourages regular family involvement with residents of care facilities.
Chapter 1536 (AB 1674/Wyman)	Requires the Department of Social Services to process license revocations in a timely manner.
Chapter 1372 (AB 1676/Wyman)	Allows the Department of Social Services to take stronger enforcement action against deficient facilities.
Chapter 1415 (AB 1940/Bates)	Establishes additional enforcement mechanisms against unlicensed facilities.

Chapter 1127 (SB 185/Mello)	Omnibus Residential Care Facilities for the Elderly Act; establishes separate licensing procedure for elderly care facilities.
Statutes of 1989:	
Chapter 825 (AB 314/Leslie)	Requires the Department of Social Services to determine if an applicant for facility licensure has been arrested for specific crimes.
Chapter 565 (AB 1451/Speier)	Requires third-party notification by the facility of substantiated complaints or citations. Also requires posting in facility of complaints and citations.
Chapter 488 (AB 1455/Pringle)	Allows counties to license residential care facilities for the elderly having six beds or less.
Chapter 1261 (AB 1484/Bentley)	Requires the State Fire Marshal to develop new fire code classification for residential care facilities for the elderly.
Chapter 675 (AB 1554/Wyman)	Allows both district attorneys and city attorneys to prosecute violations regarding residential care facilities.
Chapter 434 (AB 2323/Hannigan)	Requires a study to establish criteria for certification of residential care facilities administrators.
Chapter 458 (AB 2414/Waters, N.)	Requires residential care facilities to post and use license number in all public advertisements and documents.
Chapter R116 (ACR 41/Pringle)	Requires the Health and Welfare Agency to identify possible new funding sources for residential care facilities.
Chapter 1372 (SB 481/Mello)	Allows licensure of residential care facilities that provide "restricted facility" care to residents with irreversible dementia and establishes a pilot project.
Chapter 694 (SB 944/Rosenthal)	Provides for criminal penalties for state employees who divulge information regarding residential care facilities to any member of the public.
Chapter 911 (SB 1076/Bergeson)	Requires written notice of public access to facility licensing reports.
Chapter 465 (SB 1077/Bergeson)	Requires inclusion of facility license number in all advertising and correspondence.
Chapter 466 (SB 1102/Roberti)	Allows family councils to be organized in residential care facilities for the elderly.

Chapter 1115 (SB 1166/Mello)	Omnibus residential care facilities for the elderly reform bill. Deals with licensure, enforcement and minimum standards.

Statutes of 1990:

Chapter 436 (AB 1989/Hannigan)	Redefines residential care facilities fire regulations to allow non-ambulatory residents into a wider range of facilities.
Chapter 1488 (AB 2989/Hunter & Harvey)	Establishes doubled fines for unlicensed facilities that, when detected, refuse to apply for licensure or fail to become licensed but continue to operate. Also allows criminal prosecution of facility operators.

APPENDIX B

Department of Social Services Summary of Regulatory Activity Required by 14 Statutes
(Excerpted from Department's December 20, 1990 Letter)

AB 3589 (Mojonnier), Chapter 1272, Statutes of 1984

AB 3589 required residential Community Care Facilities (CCF) with a licensed capacity of 25 or more residents to assist the residents in establishment of a patient-oriented facility council, should the majority of the residents make such a request. The composition of the council was to include residents and their family members.

In January, 1985, written implementation instructions were transmitted to all Community Care Licensing Division (CCLD) field offices to inform licensing staff of the new law and its effective date. Regulations were developed and became effective in December, 1986 for specific categories of CCFs impacted by this legislation. The following regulatory sections were added to the California Code of Regulations (CCR), Title 22, Division 6: for Group Homes, Section 84080; for Adult Residential Facilities, Section 85080. The provisions of this law does not apply to Residential Care Facilities for the Elderly (RCFE).

AB 17 (Wright), Chapter 1096, Statutes of 1985

AB 17 defined a "placement agency" and stated that any entity deemed a placement agency by definition can only place individuals in a licensed CCF or RCFE. A current register of residents containing specific client information was required to be maintained by the licensee. Lastly, AB 17 required the Department to notify affected placement agencies and the Office of the State Long-Term Care Ombudsman of any serious violation which results in the assessment of any penalty or causes an accusation to be filed for license revocation.

In September, 1987, CCR Title 22, Division 6, Sections 87571 and 80071 were added to the RCFE and CCF regulations, respectively, to comply with the client register requirement.

An update to the Evaluator Manual dated February, 1987 set forth the procedures to follow for notification to placement agencies and the Long-Term Care Ombudsman of those serious violations which are reportable as required by this legislation.

A letter was sent in September, 1986 to all county probation and county welfare departments to inform them of their placement responsibilities under the new law.

AB 384 (Filante), Chapter 728, Statutes of 1985

AB 384 established a definition for "unlicensed facilities" for RCFEs. Additionally, it required the Department to refer residents of unlicensed RCFEs to the appropriate placement or adult protective service agency for placement in other facilities under specified circumstances. It also required RCFEs to obtain and maintain a valid facility license to operate in California.

All components of this legislation were implemented in September, 1988 by adoption of the following regulations:

CCR, Title 22, Division 6, Section 87101(a)(46) was added to reference the definition of an "Unlicensed Residential Facility for the Elderly."

Sections 87105(a) and 87106(f) of the above-referenced regulations were amended to require RCFEs to obtain a currently valid license, and set forth the notification requirement for the licensing agency, respectively.

AB 1539, (Seastrand), Chapter 954, Statutes of 1985

AB 1539 required all residential CCFs and all RCFEs to state the facility's policy regarding family visits on the resident information form, the admission agreement, or on the resident personal rights form. Additionally, this legislation required CCFs and RCFEs to post the hours that residents can visit with their family members at the facilities. The visiting hours must be posed in a location accessible to residents and their families.

Provisions of this law were implemented in January, 1988, by adoption/amendment of CCR, Title 22, Division 6 regulations Sections 87222(a)(10), 87568(b)(9), 87572(a)(10) and 87572(c) and (d) for RCFEs and sections 80022(a)(14), 80068(b)(8), and 80072(a)(10) and 80072(c) for CCFs.

AB 1674 (Wyman), Chapter 1536, Statutes of 1985

1. Assembly Bill 1674 required the Department to "commence and process licensure revocations . . . in a timely and expeditious manner."

   The Department remains committed to complying with this statutory mandate and is continually monitoring and seeking to expedite the processing of those actions. Caseload increases in legal actions involving all categories of Community Care Facilities have required a balance in processing all types of cases, but a priority clearly has been put on expeditious processing of actions against RCFEs.

   Caseloads of revocation actions have been monitored constantly, with statistics being maintained. These statistics have been distributed to motivate individual staff members to look closely at their personal productivity and determine if revision and improvement of their own methods of processing legal cases is needed.

   In response to the statute, the Department has added staff members; including clericals, legal analysts and attorneys. As the workload has increased, the Department has routinely gone to the Legislature to request staff augmentation. Since this legislation was implemented, over twenty-five permanent and limited-term attorneys have been added to the Department's Legal Division. To improve the efficiency of that office, an office manager was hired.

   Training of staff has been expanded and improved since 1985, including thorough training of the attorneys in all areas of the hearing process. Also, the legal analysts have received training in relevant areas, including evidence and legal writing.

Since the 1985 amendment, the Department has continually reviewed its policies and procedures to expedite the drafting and filing of pleadings. The computer system has been augmented to put more terminals in the offices of attorneys and legal analysts, which has expedited the drafting of pleadings. Form pleadings have been put into the computer and can be accessed through the networked glossary, thus reducing the time required to produce the pleadings. Also, a brief bank has been established to share knowledge gained from individual cases throughout the office.

2. AB 1674 also specified circumstances under which RCFE licenses may be forfeited prior to the expiration date, and required that a full licensing fee not be charged when applying for a license for a new location. Further, it established that the standard of proof in an administrative hearing be by a preponderance of evidence.

   In December, 1985, CCLD field offices were provided with procedures for notification to licensees when forfeiture of their license occurs under conditions specified in Health and Safety Code Section 1569.19.

   Regulations dated July, 1988, (CCR, Title 22, Division 6, Section 87224(d)) implemented the mandate to ensure that the full licensing fee is not charged to licensees moving a facility from one location to another.

   The standard of proof to be applied in all proceedings for the suspension, revocation or denial of license is cited by the Department's legal staff when the pleadings are sent to the licensee. In this way, all parties to the hearing are apprised of the standards to be applied.

AB 1676 (Wyman), Chapter 1372, Statutes of 1985

AB 1676 required the Department to develop a three-tier civil penalty system for CCFs and RCFEs. The Department may use part of the increased civil penalty assessments to establish emergency client relocation funds for RCFEs and for CCFs. The Department determined that these funds were unnecessary, as local social services agencies provide emergency resident relocation services as part of their case management function, including family member notification and client transportation. These agencies absorb the costs directly associated with client relocation.

In 1990, the Department submitted regulations to the Office of Administrative Law (OAL) to implement these statutory requirements. The delay in submission of regulations to OAL was caused by the fact that the statute as written regarding three-tier civil penalties was extremely confusing and ambiguous.

AB 1676 also specifies the purpose, frequency and reporting of licensing visits to CCFs and RCFEs. This legislation codifies in statute the facility visit requirement already employed by the Department since passage of the Community Care Facilities Act in 1973.

AB 1940 (Bates), Chapter 1415, Statutes of 1985

1. AB 1940 required persons seeking initial or renewal licensure of a CCF to sign a statement indicating that they have read and understand licensing regulations specific to their category of licensure.

The Department implemented this requirement in 1986 by developing a new application form (LIC 200) which contains a section for the applicant to sign affirming that the regulations have been read and understood.

2. This legislation also specified that operation of an unlicensed CCF is subject to a summons to appear in court. It also allowed peace officers to cite unlicensed residential CCF operators an infraction carrying a $200 per day fine.

   The Department implemented these statutes in December, 1985, by sending letters to all county and state licensing offices advising them of the changes in the law. We have also conducted training in the issuance of the "summons to appear in court" for the Department's peace officers. In addition, various law enforcement agencies throughout the state have been contacted and informed of their authority to cite an individual for operating an unlicensed facility. The statute is specific regarding the fine amounts and other requirements; therefore, regulations were deemed unnecessary.

3. This legislation also allowed the Department to issue an immediate civil penalty of $200 per day for operating residential CCFs or RCFEs without a license if the operator refuses to seek licensure or if the application is denied and the operator continues to operate the unlicensed facility.

   Regulation sections specific to the $200 civil penalty for unlicensed facility operations were adopted in 1988 and are contained in CCR, Title 22, Division 6, Sections 80058 and 80059 for CCFs, and Sections 87457 and 87458 for RCFEs.

4. This legislation also allows the Department to employ civil, criminal and administrative remedies in any combination.

   Regulations were not needed to successfully implement this statutory authority of the Department. However, to further clarify potential remedy actions by the Department, a regulation was adopted in 1988, located at CCR, Title 22, Division 6, Section 80006(e).

Senate Bill (SB) 185 (Mello), Chapter 1127, Statutes of 1985

Chapter 3.3 (commencing with Section 1569) was added to the Health and Safety Code establishing the RCFE Act. The following summarizes salient provisions of the RCFE Act and the corresponding action(s) taken by the Department:

1. Established RCFEs as a separate and distinct licensing category, meaning that the RCFE licensing category is no longer subject to the Community Care Facilities Act.

   The Department continues to use applicable regulations, adopted in 1983 and renumbered as CCR, Title 22, Division 6, Sections 87100 et seq., to enforce the RCFE Act.

2. Redefined RCFEs to allow for the care of persons under 60 years of age under specified conditions.

   In 1986, the Department began enforcing the statutory requirement to allow persons under 60 years of age to be served in RCFEs provided it is determined that they have compatible needs with the elderly population. This mandated age compatibility is reflected on RCFE licenses.

The "clean-up" regulations package for RCFEs currently under development for submission to the Department's Regulations Development Bureau (RDB) by June, 1991, includes amendment of regulatory language to correspond with this statutory provision and with the instructions to CCLD staff already implemented.

3. Required applicants for an RCFE license to sign a statement that they have read and understand applicable statutes and regulations.

   In July, 1986, the Department implemented this mandate by revising the application form (LIC 200) to require the applicants to verify in writing that they will comply with this requirement.

4. Mandated licensees to subscribe to the RCFE regulations subscription service and to keep abreast of regulatory changes.

   In December, 1985, licensees were notified of this requirement via an all licensee letter and new applicants are made aware of this requirement during orientation. This information was passed on to provider organizations which subsequently published, and over the years have continued to publish information regarding this requirement in their newsletters.

5. Mandated licensees to submit employee fingerprint cards within 20 days of employment or initial presence in the facility, rather than within 10 days as previously required by regulation.

   In 1986, CCR Title 22, Division 6, Section 87219(c)(2) was amended to include this requirement.

6. Required applicants to attend a one-day orientation which outlines rules, regulations, responsibilities for operation of an RCFE, and provides information on relevant community services. Orientation may include participation by local Area Agencies on Aging, Ombudsmen, provider groups and others.

   Written instructions were transmitted to all CCLD field offices in 1986 to provide all-day orientation training sessions for prospective RCFE licensees on the topics outlined in this statute.

7. Required the Department to establish an interdisciplinary team of professionals. The team shall include a geriatric nurse practitioner or public health nurse with geriatric experience, and a social worker with related experience. The team is to be used to advise the Department on implementing the RCFE Act and to assist local licensing evaluators during crisis situations concerning the needs of elderly residents.

   In 1986, the Department met this requirement, in that it formed the interdisciplinary team to carry out these statutory mandates. The team is comprised of a registered nurse with extensive background in the care of the elderly and a social worker.

8. Mandated the Department to ensure that the operators and staff of RCFEs have appropriate training. The Department and the Department of Aging were required to develop a training curriculum in cooperation with provider organizations. This was to include, at a minimum, a basic understanding of facility administration and of the psycho-social and physical care needs of the elderly.

This statutory requirement is being met through use of existing regulations adopted in June, 1985, prior to enactment of SB 185, which require RCFE administrators to annually complete 20 clock hours of continuing education in the needs of the elderly and in the administration of the facility. The Department monitors compliance with this requirement as part of the licensing renewal evaluation.

9. Required the Department and the Department of Aging to develop a mandatory training program on the utilization of an assessment tool to be given to administrators and their substitutes.

Pending the development of a new assessment tool, the Department elected to continue to use existing preplacement assessment and medical reports to assess the condition of residents. The use of the assessment tool is contingent upon the adoption of the three-tier Level of Care System specified in SB 185.

10. Mandates the Director to ensure that licensing personnel have appropriate training.

In 1986, the Department instituted a comprehensive training program which requires that all new CCLD employees responsible for the licensure and ongoing monitoring of RCFEs complete a 40-hour training course during the first 90 days of employment. This training is designed specifically for new staff who have completed fewer than 16 college semester units in gerontology.

In early 1990, CCLD began to develop a curriculum for a "training academy" for all new licensing staff. This effort has been aided by a Federal grant from the Family Support Act. Once the academy curriculum is in place, it is envisioned that all new licensing field staff will complete a six-week orientation and training program.

On an annual basis, existing CCLD staff are required to complete a 36-hour training program with a curriculum that focuses on the special needs of the elderly.

11. Mandates the Health and Welfare Agency to establish an interagency task force to develop an implementation plan to establish regulations for three levels of care in RCFEs:

(a) Level I: Basic Care and Supervision

(b) Level II: Nonmedical Personal Care

(c) Level III: Health-related Assistance

Submission of the Implementation Plan to the Legislature was required by December 1, 1986. The Implementation Report was developed and submitted to the Legislature prior to December 1, 1986. Specifically, the report addressed the elaborate level of Care System proposed by the task force. However, the plan was rejected due to extensive, projected operating costs totalling approximately $25,000,000.00.

AB 1451 (Speier), Chapter 565, Statutes of 1989

AB 1451 required the Department to develop a written notice to inform prospective residents that licensing inspection reports for all facilities are on file and available for public review

in the nearest CCLD district office. This new law also required facilities to post citations received in a conspicuous location within the facility for six months.

CCLD is in the process of developing regulations along with the necessary form to be used as the written notice. It is anticipated that the proposed regulations will be submitted to RDB in June, 1991.

AB 2414 (Waters), Chapter 458, Statutes of 1989

SB 1077 (Bergeson), Chapter 465, Statutes of 1989

AB 2414 required inclusion of the facility's license number in all publications, advertisements or announcements made with the intent to attract residents. Such publications, advertisements or announcements include, but are not limited to, newspapers or magazines, consumer reports, announcements of intent to commence business, telephone directory yellow pages, professional or service directories, and radio or television commercials.

SB 1077 also mandated additional consumer safeguards; that is, all facilities must include their current license number in any public advertisement or correspondence.

CCLD has developed proposed regulations to implement both AB 2414 and SB 1077. These proposed regulations are scheduled for public hearing in January, 1991, as one regulations package. In June, 1990, the Department sent letters to every newspaper publisher in California, all publishers of yellow pages, the newspaper publishers association, all radio and television stations, and the Public Utilities Commission informing them of the new law.

SB 1076 (Bergeson), Chapter 911, Statutes of 1989

SB 1076 required that information describing the availability of licensing reports be given to any individual who expresses interest regarding admission to an RCFE.

CCLD is developing regulations to implement this legislation. We anticipate that the proposed regulations will be submitted to RDB in June, 1991.

SB 1102 (Roberti), Chapter 466, Statutes of 1989

SB 1102 precluded RCFEs from prohibiting the establishment of family councils. Facility policies on family councils shall not limit the rights of residents to independently meet with outside persons including facility personnel during nonworking hours. Such councils shall be allowed to meet at the facility, and adequate space for display of meeting notices shall be provided.

Proposed regulations are currently being developed. It is anticipated that these regulations will be submitted to RDB early in 1991.

SB 1166 (Mello), Chapter 1115, Statutes of 1989

SB 1166, known as the Residential Care Facilities for the Elderly Act, address a number of issues.

1. This legislation provided increased civil penalties for operation of an unlicensed RCFE, that such operation is a separate and distinct offense for purposes of prosecution, and that this constitutes an unfair business practice and unfair competition under the Business and Professional Code.

   All licensing field staff were notified in writing in February, 1990, of this statutory provision; all RCFE licensees were sent a letter in June, 1990. Additionally, a letter was sent in December, 1990, to all prosecutors informing them of these legislative provisions.

2. This legislation made provisions regarding cessation of review of applications under certain circumstances.

   This statute has been enforced directly, without need for regulation, and CCLD field offices were so instructed in early 1990.

3. This legislation mandates that copies of licensing reports, substantiated complaints, etc., be provided to the Long-Term Care Ombudsman.

   CCLD field offices began providing copies of RCFE licensing reports to local Ombudsman offices in February, 1989. A Memorandum of Understanding was developed and submitted to the respective authorities for signature in December, 1990. When signed, this document will be incorporated into the CCLD Manual of Policies and Procedures.

4. This legislation defines "facility manager" and makes provisions for this employee category, and for administrators,

   Proposed regulations have been drafted to define the duties and qualifications of facility managers, and to address changes to requirements concerning administrators. It is expected that these proposed regulations will be submitted to RDB by March, 1991.

5. This legislation revised civil penalties applicable to situations of repeated violations.

   Amendments were made to the proposed three-tier civil penalty regulations to incorporate the higher penalties in SB 1166 (see also AB 1676 (Wyman), Chapter 1372, Statutes of 1985, herein). These regulations were submitted in December, 1990, to OAL.

6. This legislation requires that licensees submit a written relocation plan when a resident must be relocated by Department order due to a health condition requiring care beyond RCFE license limitations.

   The requirement that licensees submit a relocation plan was incorporated into proposed regulations which had gone to public hearing before SB 1166 was enacted. The "Transfer Trauma" regulations were adopted in November, 1990.

7. This legislation provided for an RCFE resident's right to a review of a Department relocation order due to a health-related condition.

Proposed regulations have been drafted and were the subject of a public forum in November, 1990, in Sacramento. As a result of comments received, the draft regulations have been revised and are expected to be submitted to RDB in January, 1991.

8. Another portion of this legislation required the implementation of a prelicensing and administrator certification of a prelicensing and administrator certification program. A task group was convened to assist the Department with regulation development. Those regulations have been drafted and are currently undergoing internal review. The Department plans to file these regulations on an emergency basis in February, 1991. The regulations will take effect 30 days following the filing.

9. This legislation modified conditions for forfeiture of a license when a licensee dies or the business and property are sold.

   Proposed regulations were submitted to RDB in November, 1990, to implement these provisions of the law.

10. SB 1166 required the Department to make efforts to reduce transfer trauma to residents relocating due to temporary suspension of the facility license, and to engage in specified cooperative activities concerning resident representation and advocates.

    Draft proposed regulations have been developed and will be submitted To RDB by March, 1991.

11. This legislation mandated time frames for application processing, and addresses compatibility of young adults in RCFEs.
    Regulation packages to implement these provisions have been assigned. Research has been completed to develop a baseline time estimate for application review, in order to set the needed review limits to comply with the requirements of the Permit Reform Act.

    Draft regulations are currently under development to implement the provisions of the legislation regarding young adults.

    It is expected that both proposed regulation packages will be submitted to RDB by June, 1991.

12. This legislation addresses notifications at the time a facility is sold, and the handling of applications when a licensee dies and a relative wishes to continue facility operation.

    Proposed regulations have been developed to implement this portion of the legislation. The public hearing is scheduled for March, 1991.

LITTLE HOOVER COMMISSION FACT SHEET

The Little Hoover Commission, formally known as the Commission on California State Government Organization and Economy, is an independent state watchdog agency that was created in 1962. The Commission's mission is to investigate state government operations and through reports and recommendations promote efficiency, economy and improved service.

By statute, the Commission is a balanced bipartisan board composed of five citizen members appointed by the Governor, four citizen members appointed by the Legislature, two Senators and two Assembly members.

The Commission holds hearings once a month on topics that come to its attention from citizens, legislators and other sources. But the hearings are only a small part of a long and thorough process:

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* Hearings are constructed in such a way to explore identified issues and raise new areas for investigation.

* Two to six months of intensive fieldwork is undertaken before a report, including findings and recommendations, is written, adopted and released.

* Legislation to implement recommendations is sponsored and lobbied through the legislative system.

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