

MOTION BY SUPERVISORS MARK RIDLEY-THOMAS
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May 26, 2020

Improving Oversight and Accountability Within Skilled Nursing Facilities

Skilled nursing facilities (SNFs) serve many of Los Angeles County’s (County) most frail, elderly, and medically fragile residents. Moreover, the majority of the residents in these facilities are very low-income, with 62% of residents relying on Medicaid.

SNFs have become the epicenter of the County’s COVID-19 epidemic. As of May 18, 2020, 4,794 SNF residents and 2,918 SNF staff have tested positive for the virus. 955 individuals from institutional settings, the vast majority of which reside in SNFs, have died, representing 52% of all deaths Countywide. The control of the rapid spread of COVID-19 in these facilities is made more complex as these institutions, many of which are for-profit entities, have historically been challenged with low marks for patient satisfaction, employee pay, and quality of care.

The California Department of Public Health (CDPH) has the responsibility for licensing and monitoring health care facilities, including SNFs, throughout the State. However, in the County, the oversight of approximately 2,500 health facilities, which includes approximately 400 SNFs, has historically been shared with the County Department of Public Health (DPH).

In 2014, the Board of Supervisors (Board) recognized the sub-standard conditions and inadequate oversight of SNFs, and called for an audit of County inspections and

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investigations which revealed a backlog of approximately 3,000 SNFs' investigations. By 2019, the SNFs' investigation backlog had grown to 5,000, with approximately 2,100 new complaints annually contributing to this backlog.

In 2019, DPH entered into a new contract with CDPH to fully transfer responsibility of health care facility investigation and monitoring activities to the County, with the objective of creating more operational efficiencies and improving the quality of enforcement activities. Despite this new arrangement, thousands of complaints continue to be registered with the County each year.

The COVID-19 crisis has exacerbated concerns within these facilities. In an effort to mitigate the spread and impact of the virus, the Board unanimously approved two motions on April 28, 2020 related to congregate living facilities. The first motion (Ridley-Thomas) advocated for Statewide action to improve infection control protocols and worker safety within SNFs and other congregate living facilities, and the second motion (Hahn) asked for a plan to improve COVID-19 testing among residents and staff within these settings, with a particular focus on SNFs.

Subsequently, on May 11, 2020, CDPH issued an All Facilities Letter (AFL) which requires SNFs to submit a facility-specific COVID-19 Mitigation Plan by June 1, 2020 which must include the following six elements:

1. **Testing and Cohorting.** The SNFs must develop a plan in conjunction with CDPH and their local health department for regular testing of residents and staff, including how test results will be used to inform the cohorting of residents and health care personnel;
2. **Infection Prevention and Control.** The SNFs must have a full-time, dedicated Infection Preventionist, and a plan must be in place for infection prevention quality control;
3. **Personal Protective Equipment (PPE).** The SNFs must have a plan for adequate provision of PPE, including types that will be kept in stock, duration the stock is expected to last, and information provided on established contracts or relationships with vendors for replenishing stock;

4. **Staffing Shortages.** The SNFs must have policies in place to address health care professional staffing shortages, including contingency and crisis capacity strategies;
5. **Designation of Space.** The SNFs must have policies in place for dedicated spaces within the facility to ensure separation of infected patients and for eliminating movement of health care professionals among those spaces to minimize transmission risk; and
6. **Communication.** A designated staff member must be assigned responsibility for daily communications with staff, residents, and their families regarding the status and impact of COVID-19 in the facility.

Per CDPH, each SNF will receive a visit at least every six to eight weeks to validate its certification. If the facility is found to be delinquent in its implementation of an approved mitigation plan, or unsafe practices are identified that have caused, or are likely to cause, harm to patients, enforcement action may be taken, including the assessment of civil penalties.

Moreover, on May 13, 2020, CDPH issued another AFL which requires all SNFs to report daily its COVID-19 facility data to the CDPH via an online survey, with the objective of ensuring that the State has the information necessary to respond to the COVID-19 outbreak and to provide resources and support to SNFs.

DPH has responsibility in the County for assessing the adequacy of the mitigation plans and oversight of their implementation. Taking into consideration the County's current financial constraints, it is critical that the County appropriately prioritize and reallocate, if necessary, existing County resources, including subject matter experts, to ensure the full operationalization of effective mitigation plans immediately and on an ongoing basis.

The COVID-19 crisis has required the workforce that normally inventories, manages and responds to SNF complaints and investigations be deployed to focus on COVID-19-related issues. While this staff deployment may be warranted given the

severity of this crisis, it calls into question whether other serious quality control issues within these facilities are growing and persisting without appropriate intervention.

More broadly, it is critical that the County learn from this crisis and the range of internal and external factors that have contributed to ongoing inadequate conditions within SNFs. The current situation demands an immediate, independent and holistic review of these facilities, as well as the County's capacity to oversee them, to mitigate further COVID-19 impact and prevent both small and large-scale public health emergencies within these settings on an ongoing basis. As a much-needed accountability measure, an Inspector General should be appointed to conduct an exhaustive review of the County's capacity to regulate these facilities, recommend structural and operational changes, and outline a plan for ensuring adequate and sustainable oversight. Moreover, the Inspector General should identify regulatory and policy recommendations for consideration at the local, state and federal level to enhance the quality of care for residents, ensure that ongoing adequate infection control measures are in place, and support the health care professionals that serve in this industry.

WE THEREFORE MOVE THAT THE BOARD OF SUPERVISORS:

1. Direct the Auditor-Controller, in consultation with other appropriate Los Angeles County (County) Department directors, to:
 - a. Design a publicly available dashboard, consistent with State requirements, to be updated and posted on a weekly basis by the Department of Public Health (DPH), that provides information, by individual skilled nursing facility (SNF), on the following:
 - i. The number of cumulative and current COVID-19 cases to date, broken down by residents and staff;
 - ii. The number of COVID tests performed each month, broken down by residents and staff, testing among symptomatic and asymptomatic individuals, and the percent positive among each cohort; and

- iii. The implementation status of each facility's COVID-19 Mitigation Plan, which specifically notes compliance with the following requirements:
 - 1. Testing and Cohorting;
 - 2. Infection Prevention and Control;
 - 3. Personal Protective Equipment (PPE);
 - 4. Staffing;
 - 5. Designation of space to ensure separation of infected patients and for eliminating movement of health care personnel among those spaces; and
 - 6. Daily Communications Protocols; and
- iv. Other publicly-available quality and patient experience metrics, as deemed appropriate;
- b. Assess DPH's Facility Inspection Division's (HFID) ability to monitor and ensure compliance with the COVID-19 Mitigation Plans while maintaining the required level of non-COVID-19-related investigations and meeting other critical oversight roles necessary to ensure the ongoing health and safety of residents and staff within these facilities. This should include a comparison of HFID's staffing level, in terms of number of employees and classifications, to other counties in the State in proportion to the number of SNFs and relative to the State-contracted scope of work; and
- c. Work with the Chief Executive Officer, Director of the Department of Human Resources, County Counsel, and the Director of DPH to ensure there is the necessary staffing, expertise, training, enforcement protocols, and other functions required to support this monitoring and enforcement effort.

WE FURTHER MOVE THAT THE BOARD OF SUPERVISORS:

Direct the Executive Officer of the Board of Supervisors (Board) to facilitate the appointment of an Inspector General to provide a report on the Oversight and Operations

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of Skilled Nursing Facilities in Los Angeles County (Report). The Report should provide an evaluation of SNFs within the County, and recommendations on operational and programmatic changes necessary to improve the County's monitoring and oversight of these facilities. The Report should also include legislative and regulatory recommendations aimed at improving operations within these facilities, given the role of state and federal regulations impacting the operation of these facilities. The Report should be completed in consultation with the Auditor-Controller, directors of the health and social services departments of the County, County Counsel, and other appropriate department leaders. The Inspector General should also consult with subject matter experts including but not limited to medical professionals, representatives of patients, workforce, and insurance payers, as well as individuals with a high level of understanding of SNF administrative, financial and operational protocols, as well as legal and regulatory oversight to guide the recommendations within the Report. The Inspector General should be selected on or before July 1, 2020, provide a proposed scope of work to the Board in writing by August 1, 2020 that outlines a schedule for completing the Report, and thereafter provide interim reports every 60 days until the final Report is completed. A qualified County employee should either be reassigned to the position of Inspector General or philanthropic resources should be secured in the event that the most suitable candidate is not a County employee.

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