

Senate Special Committee on Pandemic Emergency Response
Skilled Nursing Facilities during the COVID-19 Pandemic
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Testimony of Tony Chicotel, Staff Attorney
California Advocates for Nursing Home Reform

Good morning Chair Gonzalez and members. Thank you for inviting me to speak today.

My name is Tony Chicotel. I am a staff attorney with California Advocates for Nursing Home Reform - also known as CANHR. I am testifying today on behalf of nursing home residents. Residents around the state are scared, angry, and frustrated.

We need to learn from what is happening and improve long term care. It's not blaming or punishing when we examine systemic weak points and failures - it is fulfilling our public commitment to assess and grow.

Much of the devastation in nursing homes was avoidable. We have had decades of feeble state leadership and half-hearted enforcement from DPH. We have a public payment structure that divides facilities' interests from residents' interests. We have created the environment in which pandemics kill nursing home residents with horrific success.

When COVID hit, nursing home residents and staff were sacrificed in favor of other health care settings and patients. There were many fatal missteps such as:

- a. Surveyors, Ombudsman, and families were excluded from facilities, creating a massive loss of oversight and direct care.
- b. Some of the worst facilities in the state are being designated as COVID-19 facilities.
- c. Since March, California performed over 1,300 infection control surveys and did not issue a single infection control deficiency as a result. The surveyors were told to not issue deficiencies and gave clean bills of health to facilities that were in the process of experiencing enormous COVID-19 outbreaks.

Now we have at least 2,000 residents dead, 10,000 residents infected, and almost 6,000 staff infected.

We get the outcome our system is designed to provide. There are no surprises here. Well before COVID, the CDC estimates that 388,000 long term care residents die annually from infectious disease in our country. We put our sickest, most frail people into crowded buildings with insufficient staffing run by business people whose ultimate goal is not to provide great care but to extract profit funded by taxpayers. Incredibly, providing good care is not aligned with profitability. This is not just fact - it is the product of design.

The vast majority of nursing home revenue comes from the government, and the government has proven to be an impulse shopper - using its heart and not its head - when it shovels over \$5 Billion every year and is poised to give an enormous, no-strings attached, raise this month. CANHR has submitted a [Ten-Point Plan](#) for statewide long term care reform. Here are some of our most important recommendations:

- Enforcement / Accountability. Enforcement is weak. Complaints have exploded. Violations, like bad infection control, are commonplace but not discouraged due to lack of fines. 99% of infection control violations are labeled “no harm.” Providers have sought blanket immunity for wrongdoers, even if they commit gross negligence that causes death. What we need, what we have long needed, is to empower residents and victims of poor care to do enforcement. DPH has proven, for decades, that they can’t get the job done.
- Staffing. Our minimum staffing standards are too low and often violated. Raise staffing minimums, particularly for registered nurses, and dump the waivers that give facilities a pass to provide less staffing than the minimum. There is budget legislation right now where these simple reforms could be added.
- Ownership. Our worst operators take over nursing homes without licenses and squat and profit for years. Throw out these operators who don’t have licenses. The holes in the ownership approval process have been exploited mercilessly and CDPH does nothing about it.
- Budget. Steer public resources to HCBS and away from nursing homes. In other words, do the opposite of what has been proposed in the governor’s budget.
- Emergency Preparedness. We now have a pandemic colliding with wildfire season. The Senate will soon vote on Senator Jackson’s SB 1207, which will ensure state compliance with the federal standard that all nursing homes have 96 hours of backup power to keep residents safe during a blackout. I urge the members to vote yes on this simple but vital bill.

There is a tremendous opportunity to change the way we provide long term care in this state and improve the quality of life for hundreds of thousands of Californians. The pandemic has not broken the system, it has revealed it. The system does not prioritize the resident experience - residents are bystanders and too often victims. This needs to change. For any Senators interested in reform, I urge you to contact me and let’s get to work.

Thank you again for this opportunity to testify before the committee. It is an honor to speak for residents who are in such great need of comfort and assistance.