

AGENDA

ASSEMBLY BUDGET SUBCOMMITTEE NO. 1 ON HEALTH AND HUMAN SERVICES

ASSEMBLYMEMBER TONY THURMOND, CHAIR

WEDNESDAY, MARCH 25, 2015
1:00 P.M. - STATE CAPITOL ROOM 444

ITEMS TO BE HEARD		
ITEM	DESCRIPTION	
5180	DEPARTMENT OF SOCIAL SERVICES	
ISSUE 1	COMMUNITY CARE LICENSING –BUDGET AND PROGRAM REVIEW <ul style="list-style-type: none">GOVERNOR’S PROPOSAL ON QUALITY ENHANCEMENT AND PROGRAM IMPROVEMENT	2

ISSUE 1: COMMUNITY CARE LICENSING – BUDGET AND PROGRAM REVIEW**PANEL**

- Pat Leary, Chief Deputy Director, and Pam Dickfoss, Deputy Director Community Care Licensing, California Department of Social Services
 - DSS will present an overview and current program update for CCL, including a review of implementation progress of funding provided in the 2014 Budget.
 - DSS is asked to also present briefly on their Next Phase Quality Enhancement and Program Improvement proposal in the Governor's Budget, outlined more comprehensively in the agenda.
- Lourdes Morales, Legislative Analyst's Office
- John Silva and Chi Lee, Department of Finance
- Public Comment

PROGRAM DESCRIPTION

The Community Care Licensing (CCL) division within DSS oversees the licensing of various facilities that can be grouped into three broad categories: child care, children's residential, and adult and senior care facilities. The division is also responsible for investigating any complaints lodged against these facilities and for conducting inspections of the facilities. The state monitors approximately 66,000 homes and facilities, which are estimated to have the capacity to serve over 1.3 million Californians. Additionally, DSS contracts with counties to license an additional 8,700 foster family homes and family child care homes.

CCL Staffing and Facility Monitoring. The roughly 66,000 homes and facilities statewide directly under the regulatory purview of CCL are primarily monitored and licensed by just over 460 licensing analysts. These licensing analysts are located in 25 regional offices throughout the state and are responsible for conducting annually over 24,000 inspections and 14,000 complaint investigations. Current practice is for CCL to conduct random inspections on at least 30 percent of all facilities annually, and law requires each facility to be visited no less than once every five years. Additionally, approximately 10 percent of facilities are required to be inspected annually as a requirement of federal funding or due to poor compliance history. Although the CCL has had difficulty meeting these time frames in the past, the division is generally meeting these time frames currently.

Prior to 2002–03, most facilities licensed by CCL were required to be visited annually. Visits were used to check for compliance with health and safety requirements designed to protect those in the care of CCL–licensed facilities. Budget–related legislation

enacted in 2003 lengthened the intervals between visits for most facilities from one year to five years. Additionally, the legislation included “trigger” language that increased the percentage of annual random inspections—starting with 10 percent of facilities—based on the number of citations issued in the prior year.

The extended interval between visits made CCL more reliant on complaints to identify health and safety violations. This means CCL is primarily identifying noncompliance after the fact, frequently as the result of a complaint where harm has already occurred, rather than identifying and addressing risks that may not have yet resulted in harm. There is concern that relying on complaints may be less effective at protecting the health and safety of clients than a system that detects and addresses issues proactively. Currently, CCL investigates over 14,000 complaints involving licensed care annually.

Recent Issues at Licensed Facilities. Recent health and safety incidents at licensed facilities have gained the attention of the media and the Legislature. These include incidents of neglect and abuse, as well as evidence in general of inconsistent and inadequate oversight, monitoring, and enforcement of licensing standards. In response to the health and safety issues discovered at facilities under the regulatory purview of CCL, the 2014–15 Governor’s Budget proposed and the Legislature approved a comprehensive plan to reform the CCL program. In addition, CCL is working, using current resources, on a “Transparency Site,” with increasing access to the public to inspection and complaint information for facilities. The Subcommittee has requested additional information on planned milestones for this site as it progresses in its development.

2014 BUDGET QUALITY ENHANCEMENT AND PROGRAM IMPROVEMENT UPDATE

2014–15 Budget Act Funds CCL Quality Enhancements. The 2014–15 spending plan funded the Governor’s proposal for quality enhancements and improvements in CCL. This included 71.5 positions and \$5.8 million General Fund to (1) create a more robust training program for licensing inspectors, (2) create a quality assurance unit that is trained to detect instances of systemic noncompliance, (3) centralize and make more efficient the application and complaint intake process, and (4) create some medical capacity at DSS to begin considering the increasing medical needs of those in assisted living facilities. The creation of the quality assurance unit was intended in part to address the historical lack of systematic enforcement data to help target enforcement resources to cases with the greatest likelihood of improving compliance. For instances when the license of a facility is suspended or revoked, budget-related legislation allows for the department to appoint a qualified temporary manager or receiver to: (1) assume responsibility of the operation of the facility and assist in bringing it into compliance, (2) facilitate the transfer of ownership of the facility to a new licensee, or (3) coordinate and oversee the transfer of clients to a new facility if the facility is closing.

Status of 2014–15 Reforms. The DSS has filled the vast majority of positions authorized as part of the 2014 Budget for the CCL quality enhancements. Several components of the 2014–15 spending plan are now fully implemented, while in other cases the department is still hiring and training its staff in preparation for implementation. Specifically, the greatest advances have been made in the provision of more robust training for managers and licensing analysts and in establishing the statewide complaint hotline, which is now operational. While staffing resources for the quality assurance unit and centralized application processing have been hired, these staff are still undergoing training before the units become operational. On the other hand, the department has not yet filled the nurse practitioner position authorized to assist in the oversight of a population that is increasingly medically fragile.

The final 2014–15 budget package included statutory language specifying that it is the intent of the Legislature to, over time, increase the frequency of CCL–regulated facility inspections to annually for some or all facilities.

GOVERNOR’S PROPOSAL

In response to the intent language noted above, the Governor’s budget proposes a multiyear, multistage plan to further reform the CCL program. The proposal includes an increase of 28.5 positions (13 two–year limited–term positions) and \$3 million General Fund in 2015–16 to (1) hire and begin training staff in preparation for an increase in the frequency of inspections for all facility types beginning in 2016–17 and (2) make various other changes intended to strengthen enforcement capacity and improve the quality of care delivered at facilities under the regulatory purview of CCL. The proposed reforms would go into effect incrementally through 2018–19. The proposal includes a request for additional resources in budget years beyond 2015–16 to fully implement the proposal. When fully implemented, the proposal would add a total of 145 new permanent positions within DSS at a cost of \$37.3 million General Fund.

Multiyear, MultiStage Plan to Increase Inspection Frequency. The Governor’s proposal would increase the frequency of inspections from at least once every five years to at least once every three years or more frequently depending on the facility type. To implement this component of the plan, the Governor requests a total of 133 positions, mostly licensing analysts. The Governor envisions hiring staff beginning in 2015–16 (with five positions) and incrementally through 2018–19 to correspond with the increased workload as the various stages of the proposal go into effect. Once fully implemented, child care facilities would be inspected every three years, children’s residential care facilities would be inspected every two years, and adult and senior care facilities would be inspected annually. The CCL division would continue to conduct random inspections on at least 30 percent of all facilities annually as is current practice. The changes to inspection frequency would go into effect in stages as follows:

- Stage 1 of Increased Inspection Frequency: Sets Inspection Frequency for All Facility Types to at Least Once Every Three Years. Beginning in January 2017,

the inspection frequency for child care, children’s residential care, and adult and senior care facilities would be set at no less than once every three years.

- **Stage 2 of Increased Inspection Frequency:** Increases Inspection Frequency for Residential Care Facilities to at Least Once Every Two Years. Beginning January 2018, the inspection frequency for children’s residential care and adult and senior care facilities would increase to no less than once every two years. The child care facilities would continue with an at least once every three years inspection frequency.
- **Stage 3 of Increased Inspection Frequency:** Increases Inspection Frequency for Adult and Senior Care Facilities to at Least Annually. Beginning January 2019, adult and senior care facilities would be inspected at least annually. The children’s residential care facilities would continue with an at least once every two years inspection frequency.

The table from the LAO below compares current law to the Governor’s proposed inspection requirements by facility type and over time.

Inspection Frequency: Current Law and Governor’s Proposal, by Facility Type

Facility Type	Current Law	Governor’s Proposal		
		Stage 1: January 2017	Stage 2: January 2018	Stage 3: January 2019
Inspections must occur at least once every. . .				
Child care facilities	5 years	3 years	3 years (unchanged from stage 1)	3 years (unchanged from stage 1)
Children’s residential care facilities	5 years	3 years	2 years	2 years (unchanged from stage 2)
Adult and senior care facilities	5 years	3 years	2 years	1 year

Inspections that are more frequent could help overcome some of the recent health and safety incidents discovered at facilities under the regulatory purview of CCL, including incidents of neglect and abuse. Prolonged intervals between inspections allow noncompliance to occur and remain unaddressed, placing children, adults, and seniors at risk, while more frequent inspections could provide more consistent and adequate oversight and enforcement of licensing standards. There has been concern that five–year intervals between inspections are too lengthy and place vulnerable clients at risk. Most states inspect such facilities more frequently than at least once every five years.

DSS has described that the Governor’s proposal to set inspection frequencies based on three very broad categories of facility type is driven in part by the degree of “informal”

oversight available at each facility type. Informal oversight refers to the feedback clients or clients' families can offer providers or state officials regarding realized or potential threats to health and safety at CCL-licensed facilities. On the basis that child care facilities receive the highest level of informal oversight through the flow of parents in and out of facilities on a daily basis, the administration is of the view that parents' ability to identify risks and file complaints justifies the longer interval between inspections for this facility type. By comparison, the administration indicates adults and seniors are the most vulnerable as they receive the least amount of informal oversight and therefore require the most frequent inspections.

Updated Workload Study Still Pending. The requested resources for the Governor's multiyear plan are based on a 2001 workload study on licensing analysts. Yet the nature of a licensing analyst's workload has changed considerably over the last 14 years. In some cases workload has increased, such as through the addition of new statutory responsibilities. On the other hand, the introduction of the Key Indicator Tool—a measurement tool that is designed to measure compliance with a small number of licensing standards to predict compliance with all of the remaining licensing standards—has reduced workload for licensing analysts. The net effect of these changes on licensing analysts' workload is uncertain. Therefore, the 2001 study may no longer accurately reflect a licensing analyst's workload. Only once a revised study is available would DSS be able to assess the actual level of staffing resources necessary to increase the frequency of inspections as proposed. The DSS has been working towards a revised workload study. While the study was originally expected to be completed by December 2014, it is now expected to be delayed by more than one year. The LAO notes that the department may be able to update its requested resources at the May Revision based on preliminary findings from its revised workload study. The LAO also recommends that the Governor's budget proposal in 2016–17 reflect the findings of the revised workload study and incorporate the budget adjustments necessary to conform to the study.

Federal Child Care and Development Block Grant (CCDBG) Requirements. The recent reauthorization of the federal CCDBG requires annual inspections of child care facilities as a requirement of continued federal funding to states. The administration is currently awaiting additional federal guidance on this, although no state action to conform to the federal law changes appears necessary in 2015–16.

Provides Resources to Address Complaint Backlog. As described above, CCL has experienced an increase in complaints since budget-related legislation lengthened the intervals between visits. DSS indicates the increase in complaints—coupled with reductions in staff in recent years that have not been fully remedied by the elimination of furloughs, hiring of replacement staff, and the use of overtime—have created a complaint backlog. Point-in-time data from January 2015 show 2,450 complaints remained unresolved beyond the 90-day period CCL allots for investigating and addressing substantiated complaints. These are referred to as “overdue” complaints. The figure below from the LAO provides a breakdown of open and overdue complaints

by facility type as of January 2015. The Governor's 2015–16 budget proposes 13 two-year limited-term licensing analyst positions to address the complaint backlog.

Community Care Licensing (CCL) Division's Open and Overdue Complaints January 2015

Facility Type	Total Open Complaints	Complaints Open Over 90 Days ^a
Child care	550	65
Children's residential care	1,615	820
Adult and senior care	2,505	1,565
Totals	4,670	2,450

^aCCL allots a 90-day period for investigating and addressing substantiated complaints. Complaints that remain open beyond 90 days are referred to as "overdue" complaints.

The proposed positions would help (1) address the risk to clients that prolonged complaint investigations represent, (2) make programs current on addressing existing complaints, and (3) keep programs within the requirement to close complaint cases within 90 days going forward. DSS has increasingly had to dedicate resources to responding to complaints driven in part by the decreased inspection frequency. Clearing the backlog would free resources to engage in proactive enforcement rather than responding to violations where harm may have already occurred. Once the backlog is cleared, the expectation is that recent changes to the CCL program and components of the 2015–16 budget proposal, if approved, would prevent a return of overdue complaints. The more frequent facility visits and expansion of resources that support providers between visits, such as the technical assistance unit, are likely to reduce the instances of noncompliance and therefore lead to a smaller number of complaints going forward.

Provides Nurse Consultants to Monitor Residents' Medical Needs. Historically, RCFEs have been considered differently from skilled nursing facilities (SNFs) because their purpose is to serve those with less acute medical needs than those who would qualify for SNF placement. However, as the state's population has aged, and the general state policy goal of caring for people in the least restrictive setting has been emphasized, the role of the RCFEs has also changed to include those with more acute medical conditions. As a result, the CCL division has had to assess on a case-by-case basis whether residents can safely remain within a CCL-licensed facility rather than being cared for in a SNF. Currently, DSS contracts for this clinical expertise. The Governor's 2015–16 budget proposes position authority for 1.5 nurse consultant positions to replace the use of contract staff for this purpose. The nurse consultants

would be strategically located throughout the state so as to easily be deployed when licensing analysts need the assistance of medical experts.

Resources to Support Providers and Clients. The Child Care Advocate Program (CCAP)—formerly the Child Care Ombudsman Program—was established in 1984 to provide information to the general public and parents on child care licensing standards and regulations. The program’s goal was to improve the level of engagement of client–families and advocates so as to ultimately enhance the quality of care delivered at child care facilities. The Technical Support Program (TSP) was established in 1992 to (1) assist residential care providers who were experiencing difficulty in complying with licensing standards and in achieving and maintaining compliance with licensing requirements, and (2) offer trainings to providers in specific areas where licensing analysts identified chronic noncompliance. Budget pressures in recent years reduced staffing for CCAP to two positions while eliminating TSP. The Governor’s 2015–16 budget proposes position authority to add two positions to CCAP and provide three positions for TSP to expand the availability of technical assistance to providers. These resources would be available to respond to compliance–related questions and requests from providers and the public–at–large.

Creating Additional Training Capacity. The CCL division operates a training unit in Northern California that is responsible for training all new managers and licensing analysts at the time of hire. Additional training is provided as needed so that licensing inspectors remain current on regulatory requirements as statute changes. The division does not anticipate being able to absorb the increase in demand for training from the newly hired licensing analysts. In addition, the CCL division is interested in offering more robust ongoing training to licensing analysts based on special topics of relevance. The Governor’s 2015–16 budget proposes four positions to establish a new Southern California training unit and to extend ongoing training offerings to current managers and licensing analysts.

ADDITIONAL PROPOSALS IN GOVERNOR'S BUDGET FOR CCL
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The Governor's Budget additionally includes the following Budget Change Proposals and trailer bill language. The administration will present briefly on each of these proposals in their testimony under this item.

- **Implementing Legislation Related to Residential Care Facilities for the Elderly (RCFEs).** The Budget requests 8.8 permanent and 5.3 limited-term positions, for a total of 14.1 in 2015-16, at a cost of \$2.3 million General Fund to implement recently enacted legislation. This body of new law increases civil penalties for licensed facilities throughout the state and, for RCFEs, prohibits problem licensees from admitting new residents, strengthens residents’ personal rights, and expands training to increase compliance. The legislation includes:

- AB 1570, Chapter 698, Statutes of 2014, which increased training for applicants and direct care staff at RCFEs.
 - AB 2171, Chapter 702, Statutes of 2014, which expanded personal rights of residents in RCFEs.
 - AB 2236, Chapter 813, Statutes of 2014, which increased civil penalties for licensed facilities.
 - SB 911, Chapter 705, Statutes of 2014, which increased training for RCFE administrators.
 - SB 1153, Chapter 706, Statutes of 2014, which placed a prohibition on new clients for particular RCFEs.
- **Implementing Legislation Related to Group Home Complaints.** The Budget requests two permanent and 4.5 limited-term positions, for a total of 6.5 in 2015-15, at a total cost of \$726,000 General Fund to implement AB 388, Chapter 760, Statutes of 2014. The legislation requires DSS to include in its annual listing of licensed community care facilities the number, types and outcomes of licensing complaints made by facility staff or children in group homes and other youth residential facilities. It requires facilities to report to DSS any incidents concerning a child involving contact with law enforcement and DSS to inspect those facilities reporting an excessive number of calls to law enforcement. It also requires DSS to cross-report internally and to the Department of Health Care Services (DHCS) depending upon which entity had licensed the facility.
 - **Preparing for Implementation of the Home Care Services Consumer Protection Act.** The Budget requests a General Fund loan of \$5.5 million to the Home Care Fund, utilizing \$4.3 million for staff resources (25.5 permanent, 11.5 limited-term for a total of 37 positions in 2015-16). The administration states that the General Fund will be repaid with fee revenue in future years. These resources will enable to timely implementation of AB 1217, Chapter 790, Statutes of 2013, which requires DSS to regulate home care organizations and provide for background checks of affiliated, and independent, home care aides who wish to be listed on a registry. Implementation will begin on January 1, 2016.
 - **Staffing to Detect Registered Sex Offenders in Out of Home Care.** The Budget requests the conversion of four two-year limited-term positions set to expire June 30, 2015 to permanent at a cost of \$364,000 General Fund (\$443,000 total funds). These positions currently handle the workload of conducting address matches of the Department of Justice's California Sex Offender and Arson Registry (CSAR), the Licensing Information System (LIS), and the Child Welfare Services Case Management System (CWS/CMS), pursuant to recommendations issued in two reports (2008 and 2011) from the Bureau of State Audits.

- **Trailer Bill Language on Fingerprint Fee Exemption.** This proposal would continue for an additional two years the suspension of existing law that prohibits DSS and the Department of Justice (DOJ) from charging a fee to process a criminal history check of individuals who are licensed to operate child facilities, provide care in a facility, or reside at that facility. Enacting this proposal therefore allows DSS to charge fees for this service. Since 2003-04, trailer bill language has been enacted on an annual basis to suspend existing statute that prohibits the DSS from charging the fingerprint licensing fee to process a criminal history check of individuals who are licensed to operate child facilities, provide care in a facility, or reside at the facility. To the extent the prohibition to charge a fee is not suspended, and fee collection for this service ended, the state would be required to fund this activity, resulting in additional costs to the General Fund.

STAKEHOLDER REACTION AND STAFF COMMENT

The Subcommittee is in receipt of a letter from the California Assisted Living Association requesting a hastening of the movement to annual inspections for adult residential facilities. A letter from Assemblymember Ian Calderon requests uniform annual inspections for all facilities. The LAO has cautioned against adopting the entire multi-year proposal from the Governor, and to instead rely on analytics and a more data-driven model. The LAO contends that this approach could customize inspection frequency to the history and behavior of licensed actors, to maximize resources. The LAO argues that this kind of alternative would avoid an approach that might spur improvement and provide needed intervention for some facilities, while not others, depending on the type of facility in broad categories as is constructed in the Governor's current proposal.

Staff has requested information from the administration, on a technical assistance basis, on how their proposal might change if the ultimate goal were to move toward annual inspections. This information is forthcoming. With the resources proposed for 2015-16 in place in the Governor's proposal, and the acknowledged ramp-up that any increase in inspection frequency requires, the budget year might look virtually identical under an "annual inspection plan proposal" to what is being proposed under the Governor's current vision. The Assembly could choose to move forward with this proposal and continue to consider in future years whether and how a movement to annual inspections could work if the state were to pivot toward that as a goal in future years. Trailer bill language around this action in the 2015-16 budget might require some flexibility to allow for a change in future years if the Legislature is intentional about creating a possible separate path toward annual inspection of all facilities eventually.

Staff Recommendation:

Staff recommends holding all CCL issues open.