

# State Capitol Update and Looking Ahead to 2022

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## WELCOME

### AGENDA

- CA Political Landscape
- 2021 Highlights – Wins and Setbacks
- What to Expect in 2022
- Call to Action
- Upcoming Events

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## California's Political Landscape

### DEMOCRATIC SUPERMAJORITY

- All Constitutional Officers are Democrats



### State Legislature

- Assembly 60 Democrats, 18 Republicans, 1 Independent
- Senate 31 Democrats, 9 Republicans

Voter Registration (SOS 7/16/21 )

- **Democrats 46.5%, Republicans 24.1%, NPP 23.3%**

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## Redistricting

- CA Redistricting Commission will complete its work by the end of December
- New maps for Congressional, Senate and Assembly Districts
- CA expected to lose at least 1 Congressional seat
- Most districts will lessen in Republican voter registration
- Many Senate & Assembly seats will overlap

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## Recall of Governor Newsom

- Distraction for several months, cost state millions of dollars
- Soundly defeated, announced right after polls closed
- No on Recall received 61.9 percent of the vote
- Newsom should easily get re-elected in 2022 to 2<sup>nd</sup> term
- Labor groups top funders of campaign to defeat recall effort

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## Perception of Nursing Homes

- Challenging time for nursing home sector
- Lots of negative press stories, especially early part of COVID-19 pandemic
- Advocates & labor feeling emboldened
- Democratic supermajority in legislature, nearly all Democratic bills approved and signed by Governor
- Several harmful nursing home bills introduced in 2021

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## 2021 WINS

- \$43 million in state budget to build and grow CNA programs
- Unfreezing of rates for ICF-DDs & \$20 million additional funding
- Unfreezing of Medi-Cal rates for Pediatric Subacute Facilities
- Guaranteed FFS Rate Floor for Cal AIM contracts
- Office of LTC Patient Representative established
- AB 749 (Nazarian) Certified Medical Director signed
- AB 650 (Muratsuchi) Hazard pay defeated
- AB 279 (Muratsuchi) SNF and ICF sales and closures vetoed

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## \$43 million for CNA training programs

- Severe nursing shortage, 3 out of 4 vacancies in SNFs are CNAs
- CA has worse nursing shortage of any state, projected 44,500 nurses short in 2030
- Funding administered by HCAI (formerly OSHPD), funds to build and grow CNA programs around the state
- In progress

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## Unfreezing of rates of ICF-DDs and PSAs

- Medi-Cal rates unfrozen after 13 years
- \$20 million for ICF-DD homes for smoothing of rates
- All homes transitioning to managed care under CalAIM in 2023
- Homes and facilities facing severe staffing shortages, spike in costs due to COVID-19

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### Office of Patient Representative

- Implements CANHR v. Angel decision, for incapacitated unrepresented residents requires patient reps that cannot be paid for or affiliated with SNFs
- Other HSC 1418.8 changes re: process
- Office of LTC Patient Representative approved in budget trailer bill
- Located in Dept. of Aging, provide training to patient reps, issue RFPs and manage contracts
- Effective July 27, 2022
- Paid for with Licensing fees

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### AB 749 (Nazarian) Certified Medical Directors

- Medical Directors in SNFs must get certified by AMDA or equivalent within 5 years of being hired
- Current Medical Directors will have until 1/1/27, 5 years after the effective date of the bill to get certified
- Support more clinical training for staff and focus on geriatrics

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### AB 650 (Muratsuchi) Hazard Pay

- Stalled on Assembly Floor
- Would have required hazard pay for all workers in SNFs, including contractors
- \$2500 per quarter bonuses FT employees, \$1500 PT employees and \$1000 for less than PT
- **Would have cost SNF sector over \$1.4 Billion or \$1.15 million per facility**
- Ignored hazard pay, bonuses, overtime, other benefits facilities offered during COVID-19 pandemic
- Could see another effort next year

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## AB 279 (Muratsuchi) SNFs and ICFs: sales and closures

- Vetoed by Governor Newsom
- Would have restricted closures, sales or transfer of patients without approval during COVID-19 pandemic unless facility declared bankruptcy
- Required notices of sales and closures for 6 months after the end of the pandemic to families and residents, notice had to be issued 3 months prior to sale or closure
- CDPH already has procedures to follow in order to close or sell facility, requiring bankruptcy problematic

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## 2021 Setbacks

- AB 849 (Reyes) SNFs: Civil liability
- AB 323 (Kalra) SNFs and ICFs: citations and fines
- SB 650 (Stern) SNFs: financial transparency
- Transfer discharges – increased penalties if fail to admit after transfer discharge hearing

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## AB 849 (Reyes) SNFs: civil liability

- Hard fought battle in the legislature
- Reverses CA Supreme Court's *Jarman vs. HCR Manorcare* decision
- Cases brought for 1430 (b) cases for violations of patient rights are no longer \$500 per case plus attorney's fees
- **For violations occurring March 1, 2021 or later awards for 1430 (b) cases can be up to \$500 per violation with NO CAP**
- Concerned about financial stability of sector, lawsuit abuse
- Awards not covered by liability insurance

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## AB 323 (Katra) SNFs and ICFs: citations and fines

- Another hard fought battle
- Lowers the evidence standard of AA citations for SNFs and ICFs from "direct proximate cause" to "substantial factor"
- CDPH and author refused to include "foreseeability" in definition
- Increases fines for AA, A and B citations
- Concerned new law will lead to more AA citations, potential closure of facilities
- Increased fines take funds away from patient care
- Lower evidence standard means more facilities may lose QASP funds

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## Fine Increases in AB 323 (Katra)

VIOLATION	CURRENT FINE	NEW FINE AMOUNT
AA	\$25,000 - \$100,000	\$30,000 - \$120,000
A	\$2,000 - \$20,000	\$3,500 - \$25,000
A that resulted in death		\$15,000 - \$60,000
Willful material falsification or omission	\$2,000 - \$20,000	\$3,500 - \$25,000
B	\$100 - \$2,000	\$150 - \$3,000

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## SB 650 (Stern) SNFs: financial transparency

- Builds on AB 1953 (Wood) from 2018 requires organizations that operate or manage a SNF and have 5% interest or more in a related party shall disclose the service that is provided , # of individuals at the SNF that provide that service
- If the goods, fees, and services collectively worth \$10,000 or more per year are delivered to the SNF, must include the related party's profit and loss statement, and PBJ public use data of the previous quarter for the SNF's direct caregivers
- Information available December 2021

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### SB 650 (Stern) continued

- Starting in 2023, organization that operates, conducts, owns, manages, or maintains a SNF or facilities prepare and **file** with OSHPD (HCAI) an **annual consolidated financial report**
- Includes data from all operating entities, license holders, related parties with **ownership or control interest of 5% or more** and provides any service, facility, or supply to the SNF
- OSHPD to create format of information to be submitted, determine if the annual consolidated financial report is complete, post reports and related documents to its website

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### New Transfer/discharge penalties

- AB 133, Health Trailer Bill
- If a resident appeals a discharge notice that goes to a hearing and DHCS finds against the facility, the facility has 3 days to re-admit the resident and file a proof of compliance document with DHCS
- **New additional daily fines of up to \$750 will accrue until facility complies with the finding up to a maximum of \$75,000**
- CAHF strongly opposed informal discharge hearing process and new significant penalties for failing to comply with transfer/discharge hearing decisions

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### Other Bills: SB 311 (Hueso)

- Compassionate Access to Medical Cannabis Act or Ryan's Law
- Health facilities must allow use of medical cannabis for terminally ill residents
- Facilities can reasonably restrict the manner in which a patient stores and uses medicinal cannabis to ensure safety
- **Requires that health care facilities permitting patient use of medical cannabis comply with other drug and medication requirements and would make those facilities subject to enforcement actions by CDPH.**
- If Federal enforcement by CMS or DOJ, facilities do not have to comply
- Clean up legislation next year, questions about nursing staff providing medical cannabis, implications for LTC pharmacies

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### Other Bills: SB 447 (Laird)

- Decedent's Cause of Action
- Decedent's personal representative or successor in interest can pursue damages for a decedent's pain, suffering, or disfigurement if the action was granted a specified preference before January 1, 2022, or filed on or after January 1, 2022, and before January 1, 2026
- Does not impact MICRA or EADACPA

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### Looking ahead to 2022

- Another state budget surplus
- New AB 1629 Deal
- Workforce development – legislation/budget asks to help with staffing crisis
- AB 1502 (Muratsuchi) Changes of Ownership
- Emergency Back up power – re-run SB 1207
- Other potential efforts – staffing, financial transparency

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### New AB 1629 Deal

- Current SNF Medi-Cal reimbursement deal expires in 2022
- First deal post-COVID, lost of stakeholders paying attention
- Transitioning into CalAIM, managed care plans will administer Medi-Cal program
- Immediate, direct pass through of labor costs is top priority
- Changes to QASP
- Try and get staffing pulled out of QASP

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### Staffing ratios, financial transparency

- Continued spotlight on nursing homes
- Potential new efforts to increase 3.5/2.4 NHPPD
- Efforts to eliminate staffing waivers - SEIU
- More efforts for additional financial transparency/ related parties

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### Workforce Development

- TOP PRIORITY
- Additional funding to build long term care workforce
- Legislation to allow CNA upskilling – more skills and increased pay
- CNA scholarships
- Scholarships/loan forgiveness for Physicians, NPs, RNs, LVNs who work in long term care

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### AB 1502 (Muratsuchi) SNF: Changes of Ownership

- Opposed to legislation
- CA has longest change of ownership process of any state
- Bans use of interim managers
- Imposes fines, jail time, admissions bans for using interim manager
- Prohibits ownership if application receives more than 2 AAs or IJs
- More transparency of who is applying to be owner, requires CDPH to post information
- Dr. Jim Wood, Chair Asm. Health to join as Co-Author
- CAHF to bring forward solutions to reduce time for CHOW processing, streamline process

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### SNFs: Emergency Back-Up Power

- Possible re-introduction of SB 1207 (Jackson) Vetoed by Governor
- Would have required SNFs to have an alternative source of power to protect resident safety for no less than 96 hours during any type of power outage that complies with federal requirements
- Current CA law requires SNFs to have 6 hours of fuel for back up generators. Current federal guidance requires SNFs to have 96 hours of fuel for generators or facilities may evacuate
- Concerns about large costs for HVAC upgrades, storage capacity and storage safety

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### 2022 Elections

- Governor Newsom Re-Election, easily re-elected
- New lines for Congressional, Senate and Assembly seats
- New lines for local supervisor, city council, school board, etc.
- Many ballot initiatives in various stages of qualification
- Fairness for Injured Patients Act --MICRA Initiative- qualified
- PAGA Reform Initiative – collecting signatures

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### Grassroots Advocacy

- Elevate your voice, opponents are vocal and well connected
- Essential that CAHF members tell their story
- Build relationships with legislators and staff
- Share impact of legislation or budget proposal
- Request that your local legislator address critical issues such as healthcare workforce shortage

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## Sign Up for Phone to Action!

- Phone 2 Action is CAHF's advocacy database
- Allows us to update members on issues affecting the LTC profession
- Easiest way for CAHF members to state up to date and contact their legislators
- TEXT "CAHF" TO 52886 TO SIGN UP**



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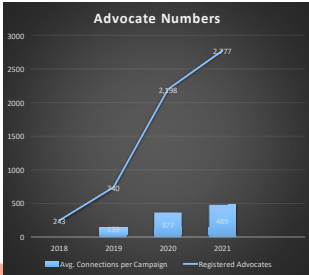
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## Phone to Action Statistics




Year	Advocate Numbers
2018	243
2019	1,256
2020	2,256
2021	2,977

Year	Avg. Connections per Campaign
2018	16
2019	19
2020	15
2021	15

### P2A Campaigns Result in Favorable Outcomes

- 2020:
  - Prop. 56 funding for ICFs restored
  - SB 1207 (Jackson) defeated
- 2021:
  - AB 650 (Muratsuchi) defeated
  - AB 279 (Muratsuchi) defeated
  - \$20m secured for ICF rate smoothing

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## Case Study of P2A Success: SB 1207 (Jackson)



OFFICE OF THE GOVERNOR

SEP 8 5 2020


To the Members of the California State Senate:

I am returning Senate Bill 1207 without my signature.

SB 1207 would require Skilled Nursing Facilities to have an alternative source of power for no less than 96 hours during any type of power outage.

Skilled Nursing Facilities are a central part of our system of care for vulnerable individuals. As such, it is important that they have sufficient emergency backup power in the event of a power interruption. However, this bill relies on an unclear federal standard as justification. Moreover, the timeline for implementing this bill is unrealistic given the need for significant renovations that facilities would need to complete to comply with this bill.

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## BACK THE CAHF PAC!

- Strong Political Action Committee is essential to promoting and protecting the long term care profession
- Give \$20 or more TODAY and you could win a raffle prize
- Sign up to be a Sustaining Investor in 2022
- Check out table in the lobby or donate on CAHF PAC webpage

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## 2022 New Laws and Regulatory Updates

- January 26 and February 2, 2022 - ONLINE ONLY

- Legal updates
- Labor Law updates
- New health care laws
- New laws impacting businesses in CA
- State and Federal Regulatory updates
- State and Federal Reimbursement updates

Registration is now open!

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## CAHF Advocacy Day

March 2-3, 2022

- Sheraton Grand, Sacramento
- Legislative Trainings
- Guest Speakers
- Legislative Visits
- Legislative reception

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## Questions?

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