



What's fueling America's dreadful nursing home care?

"We continue to get complaints about care that just boggle my mind. I mean, just gross neglect of residents," – **Tony Chicotel**.

911. What's your emergency?

America's healthcare system is broken and people are dying.

Welcome to Code WACK!, where we shine a light on America's callous healthcare system, how it hurts us and what we can do about it. I'm your host, Brenda Gazzar.

(music)

This time on **Code WACK!** How are California nursing homes lacking in oversight and enforcement today and what can we do about it? What reforms are in the works to better protect residents? To find out, we spoke to **Tony Chicotel**, senior staff attorney at **California Advocates for Nursing Home Reform**, or **CANHR**, where he promotes the rights of residents in long-term care facilities - through litigation, legislation, regulatory policy and consumer education. This is the second episode in a two part series on the state of nursing homes today.

Welcome back to Code WACK!, Tony!

Q: Last time, you mentioned that there are good regulatory and statutory standards for nursing homes both federally and in the state of California. But the quality of nursing home care is still wanting, largely due to lack of enforcement. What else can you tell us about the oversight and enforcement over nursing homes in California? How else are they lacking, and what can we do about it?

Chicotel: So let's start with the basics. There's an understaffing issue in nursing homes for sure. There's also an understaffing issue at the (state) Department of Public Health. They've had a lot of trouble filling their inspector positions, and this is a national problem. There was a Congressional hearing on this issue maybe four or five months ago, about state survey agencies not being able to stay to have their full employment levels and making sure they have all the inspectors they need to do the work. So that's one problem. So we got inspectors who are overworked because there's not enough of them. And it's been very difficult for the state to fill those positions. So when they're overworked and they're running around. And one important note is that California has never had more nursing home complaints filed than ever before.

In the last year, we now have had 14,000 nursing home complaints filed with the state. That is an all time high. We were remarking five or six years ago when the number went over 10,000, like, oh my gosh, we're at 10,000 complaints a year against nursing homes, and now we're at 14,000. So there's more complaints than ever. There's fewer inspectors to go out and do the investigations on those complaints. We're way behind on surveys. So what does that lead to? It leads to, you know, cutting corners so enforcement is lacking. Whereas you might have spent 10 hours investigating this complaint, maybe now you only spend three hours and you miss some things that could have been flagged and improved. So it's pretty grim from an enforcement perspective, and I think quality has suffered as a result.

I mean, we continue to get complaints about care that just boggle my mind. I mean, just gross neglect of residents. And then we see it just sort of culturally too in the facilities, just this idea that the staff don't have the time and the wherewithal to provide loving care. It's more like they're providing care to you, but not really with you. And that becomes a dignity issue demeaning to the residents

that they're just, they become a checklist of things to get done and they're less of a person and they suffer as a result.

Right. And if they're understaffed and have a lot of patients under their care, I can see how that could happen.

Chicotel: Yeah, it's natural. It's not because caregivers don't care. It's because they just don't have the luxury of the time that would display express care.

Right, so what reforms have been implemented in recent years that you think will make a dent in terms of residents' health and safety?

Chicotel: Oh, there's been quite a few. I think as terrible as COVID has been, there's been some silver linings in terms of policy changes, particularly in California with our legislature. There's been a lot of legislative initiative to improve care, both in nursing homes and assisted living facilities. And the governor has been very affirmative on those efforts. There's been a lot of movement towards financial transparency – that's a really important piece here because over the last, you know, several decades, nursing homes have continued to get raises through their Medicare and Medi-Cal reimbursement. It's customary pretty much every year they get raises regardless of the state federal budget outlooks. So we've been trying to get more accountability for that spending. Okay, we're going to give you more money now, let's make sure that that money goes to actually providing care to the residents.

So there's been a couple states, including California, that's done financial transparency laws requiring facilities to report more, especially chains of nursing homes, to report more how the money is going up to the top and how much of it is being spent on actual care in some states. And not California yet, but there is a bill in California to do this, (to) require a certain percentage of the overall revenue be spent on direct care to see ranges of like 65 to 80% of the facilities revenue have to be spent on the staffing that are required to take care of the residents. So those have been very, I think, important reforms. And then there's been some other reform efforts in terms of protecting residents from inappropriate discharges, which is a significant concern of residents and is also connected to the money issue

when residents switch from lucrative Medicare reimbursement to a lower revenue source or payment source.

A lot of times they become disfavored and subjected to evictions and discharges. So there's been some efforts both at the state level in California and at the national level to improve protections against inappropriate discharges. Some successful, some not so successful. There's definitely been a push, there's been a light cast on nursing homes. I think there's been some pretty good efforts to improve the quality of care and improve the way the money aligns with care, but we still have a long way to go, that's for sure.

Q: Right. So the transparency of ownership issue, has that been approved or is it in the works?

Chicotel: So there's two transparencies. We're talking about ownership transparency, there's been some progress at the federal level to improve ownership transparency. And I think that's been very helpful. And California, I think our ownership transparency is already been pretty good due to the efforts of advocates, you know, many years ago. And then there's financial transparency and there's been some progress at the state level in that regard, and now we're trying to translate that at the federal level.

Q: So like why is transparency of ownership and financing so important? What does that translate to for people?

Chicotel: It's about accountability and it's about facilities ensuring that facilities are spending their money the way we think they ought to spend the money, seeing how we're giving it to them. They shouldn't be just, you know, handouts you know, do your best and we trust you. I think the time has long passed where we trust the facilities to do the right thing and spend the money on care. We know that they siphon off money away from care as much as they possibly can in some situations within some chains to pad the profits. And to get away with providing as little care as possible, we need to end that. And the best way to end that is to open the books and see exactly where they're spending their money, if they're spending on direct care or if it's eventually being funneled up and not getting to the bedside of the residents.

Q: Right. Are you finding any difference with the not-for-profit and the for-profit nursing homes in terms of that accountability?

Chicotel: Well, there's always been qualitative differences between nonprofits and for-profits. Just generally speaking, nonprofits provide higher quality care. They have higher staffing in their facilities than the for-profits. Now, my biggest concern with that has been the disappearance of the nonprofits. I think nationally, something like 15-20% of nursing homes are nonprofit. In California, that number is probably dwindled to less than 7% or 6% of facilities are nonprofit. And on my desk right now in front of me is a healthcare impact statement that was prepared by the Attorney General's office, the California Attorney General's office to consider in approving the transfer of five nursing homes from a nonprofit provider to a for-profit provider. And I'm seeing these things, you know, multiple times a year. Now, we only have, at this point, probably less than a hundred nonprofit nursing homes in California out of a pool of about 1,250 and that number is dwindling. I mean, I have evidence of it in front of me right now.

It's sad. And I wish I had a better understanding of the reasons for this. I just think the environment has been difficult for the nonprofit providers to continue to provide the great care that they historically have and the for-profits are willing to take those buildings. And our concern is they eventually cut the staff and turn 'em into for-profits. Where that money was going back into the care, it's now going to the owners.

Got it. Thank you, Tony. So despite all these challenges to improving often terrible nursing home and other long term care, there are currently five bills before the state legislature that CANHR has sponsored or co-sponsored that aim to better protect residents.

There's [Assembly Bill 1911](#) would make the complaint process for residential care facilities more timely and efficient. Another bill is [AB 2075](#), and would ensure that residents of long term care facilities have access to a designated support person, like a family member, during a public health emergency. [AB 2800](#) would make it easier to report, investigate and prosecute elder abuse and neglect, and we've all probably heard some harrowing stories about that, while [Senate Bill 1354](#), would prohibit long term care facilities from discriminating against Medi-Cal

beneficiaries when it comes to receiving services. And finally, and there's [Senate Bill 1406](#) which would curb devastating rate increases in assisted living facilities.

So according to CANHR, each of the bills is aimed at "remedying a fundamental unfairness or inequity in the long term care system." We're keeping our fingers crossed on all those bills.

Meanwhile, California's new single-payer, Medicare for All bill, [AB 2200](#) – or CalCare – includes long term services and supports as a covered benefit. The bill also specifically supports Self-Directed Services which "promote personal choice and control over the delivery of waiver and state plan services, including who provides the services and how services are provided."

Thank you Tony Chicotel of California Advocates for Nursing Home Reform.

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Code WACK!'s powered by HEAL California, uplifting the voices of those fighting for healthcare reform around the country. I'm Brenda Gazzar.