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## California audit on nursing home care debated

*By Will Houston, Eureka Times-Standard*

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California's largest nursing home company and the state Department of Public Health are both criticizing a recent audit that says state oversight fell short as patient care violations increased.

“(The Department of) Public Health in particular has not fulfilled many of its oversight responsibilities, which are meant to ensure that nursing facilities meet quality-of-care standards,” said a report released Tuesday by the California State Auditor’s Office.

According to the audit, California’s largest nursing home owner Brius Healthcare Services, which owns about 80 nursing homes statewide, had patient care violation rates that were sometimes more than double those of two of the state’s largest nursing companies between 2006 and 2015. During the same period, three of the state’s largest nursing home owning companies made millions of dollars in profits, a large portion of which came from public funding under Medicare and Medi-Cal.

Brius owns Marin’s largest nursing home, the Novato Healthcare Center, and the San Rafael Healthcare and Wellness Center.

The audit, which began in June 2017, examined whether Brius had been using Medi-Cal funding to increase profits for other companies owned by Brius CEO Shlomo Rechnitz and his family. While the audit said Medi-Cal funds were neither used to bolster profits for these related companies, nor correlated with any decline in quality of care at the facilities, North Coast Assemblyman Jim Wood — part of a legislative committee which authorized the audit last year — stressed that its results remained alarming.

“It’s all about protecting the most vulnerable people out there. Regardless of whether you’re taking state money or private money, people have an expectation for a certain level of care,” Wood, D-Healdsburg, said Thursday. “It’s our responsibility as a state government to make sure that is happening.”

### **Audit welcomed**

Department of Public Health director Karen Smith disputed the findings, stating the auditors didn’t show evidence to back up their claims and didn’t understand her agency’s standards for licensing facilities.

Representatives from Brius and its associated management company Rockport Healthcare Services also said the audit relied on flawed state data.

Rockport CEO Dr. Michael Wasserman and Brius’ attorney Mark Johnson said that the state’s team of financial auditors moved into territory outside its expertise when it began to review nursing homes’ quality of care.

“This organization welcomed an audit report on related-party transactions and we welcome a real audit of quality,” Wasserman said Thursday.

“I wouldn’t like the data either if it showed the results that it showed, and it showed that of the three companies that were reviewed, Brius has some serious quality control and quality of care issues,” Wood said in response.

Janssen Malloy attorney Timothy Needham of Eureka, who is handling two pending wrongful death lawsuits against Brius, said he disagrees with the finding that spending millions of dollars on related companies rather than the nursing homes doesn’t affect quality of care.

“When there is insufficient care, people die,” he said. “And these facilities need to take that problem seriously.”

### **Violations rise**

To measure quality of patient care at California nursing homes, the audit team used a combination of the number of violations of federal requirements and state citations made by the Department of Public Health.

From 2006 through 2015, the number of violations across the industry increased by 31 percent — from 445 to 585 — for instances in which there was a potential for “widespread potential for more than minimal harm” or in “actual harm to patient health and safety.”

The number of serious violations that caused or were likely to cause “serious injury, harm, impairment or death to a patient” increased by 35 percent — from 46 to 62 violations — during the same time, the audit found.

After a violation is recorded, the Department of Public Health has the ability to issue citations against the nursing home. During the same time that the care violations were increasing, the number of state citations decreased by 34 percent — from 459 in 2006 to 302 in 2015.

The audit found the Department of Public Health issued citations for only 15 percent of the inspections that found the most serious deficiencies in which patients were at risk of serious harm or death.

The audit states that failing to penalize nursing homes for their failures decreases the department’s effectiveness as an enforcer of quality care.

### **Burden of proof**

In response, Public Health Director Karen Smith said the burden of proof to uphold its citations in court is much higher than just recording the violation against the nursing home. She added the report also discounts citations issued but ultimately withdrawn or dismissed as a result of high burden of proof and court challenges.

The audit also averaged the patient care violations recorded at the state’s three largest nursing home owning companies — Brius, Longwood Management Corporation and Plum Healthcare Group — and found that Brius facilities had at least twice as many violations recorded than the other two companies between 2006 and 2015.

Rechnitz told the audit team that the majority of nursing homes he buys are “distressed” and would be closed because of financial or compliance problems if he didn’t intervene, according to the report.

Both Wasserman and Johnson said that experts “universally agree” that violations and state citations are not good metrics to measure care quality. Johnson said that of the 10 Brius facilities the audit reviewed, the state data on violations and citations was found to be erroneous for half or more. He said the auditors never audited the source documents because of budget constraints.

“I think the audit team did not verify all of that data. We do think that some of those statements are incorrect,” Johnson said.

To promote better patient care, the audit recommends the Legislature make several reforms, including repurposing a financial incentive program for nursing homes and increasing fines to match inflation.

Both Wood and North Coast state Sen. Mike McGuire, D-Healdsburg, said they would support the change to the incentive program and plan to draft legislation for next year to address the audit's concerns about the Department of Public Health's oversight.

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