

**CALIFORNIA RATIOS:
The Ongoing Saga**

Iowa Legislative Interim Committee
Des Moines, Iowa
October 18, 2005

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History – Ratios Legislation

- 1976 – Ratios, ICUs and well-baby
- 1993 – Staffing legislation first introduced
- 1995 – Ballot initiatives (CNA & SEIU) defeated
- 1998 – Davis elected Governor

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History – Ratios Legislation

- 1999 – Ratio legislation signed (AB 394)
- Ratio numbers released in April 2002
- Proposed regulations released in September 2002
- Revised regulations released June 2003
- Implementation January 2004

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“AND, these numbers do not reflect:

- RNs from other states who obtain California licenses and stay temporarily for a short time
- RNs allowing their licenses to expire
- RNs who die or retire
- International RNs who obtain California licenses as pass-thru (No CGFNS required)
- RNs who maintain California license but live in another state

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Ratios – The Financial Perspective

- Annual cost of ratios to Calif. hospitals = \$1 billion
- No funding from state or Governor Davis to increase number of nurses
- California hospitals spending over \$50 million annually
- Governor Schwarzenegger announces programs to increase the number of licensed nurses

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**Ratio Requirements
“Top Three Issues”**

“at all times”

- Breaks must be covered
- Charge nurses/managers can cover if competent

Emergency Department

- Triage nurse-no assignment
- Radio nurse-no assignment
- 1:4

Behavioral Health

- Licensed nurse versus behavioral health professionals

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**Interpretation by the DHS, L&C
of "at all times" resulted in:**

- 1) Less than 1 in 9 hospitals in compliance with the law
- 2) Increased diversion of patients arriving by ambulance
(Los Angeles Local Emergency Medical Services Agency reports diversions up from 24.6% in 2003 to 36% in first quarter of 2004)

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Results continued:

- 3) 963 surgeries postponed as of 07/05/04
- 4) 9 L.A. hospitals have closed or downgraded their psychiatric units resulting in the loss of 223 beds
- 5) Cost of \$1 billion per year (may be low due to increasing salaries and cost of travelers)
- 6) Worse shortage of nurses

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Results continued:

- 7) Physicians concern – access to care disrupted
 - 1999 CMA supported AB 394
 - 2004 post-implementation, evidence of delay in service. CMA sent letter to Schwarzenegger administration
- 8) Licensed nurses voice concern over lack of autonomy and lack of control over practices

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Results continued:

- 9) Conflict with existing laws and regulations
 - EMTALA
 - Scope of Practice
 - Adult Abuse
 - Unfair Competition

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EMTALA
 “Emergency Medical Treatment
 and Active Labor Act”

- Enacted to ensure access to emergency services
- Ratios in ED (1:1, 1:2 & 1:4) require hospitals to turn patients away “whether or not hospitals break the law isn’t at issue: we are given the choice only to decide which law to break” - California Hospital CEO

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Scope of Practice Issues
RN/EVN
 Assign, assess and assist

- DHS**
 - EVNs may take assignment
- DHS/BRN**
 - Joint Statement
- BRN**
 - Asked to clarify
 - Committed to 10 days from 1/23/04

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Adult Abuse

Elder Abuse and Dependent Adult
Civil Protection Act
(California W&I Code, Sections 15600-15659)

The Act applies to:

- Elders 65 or over
- Dependent adults 18-64
- Any person between 18-64 admitted as an inpatient in an acute care facility

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Unfair Competition

California Business & Professions Codes,
Section 17,200

- Lawsuits require plaintiff and damages
- Section 17,200 allows attorneys to sue without either
- Current California case against SNFs
- Concern if not meeting ratios

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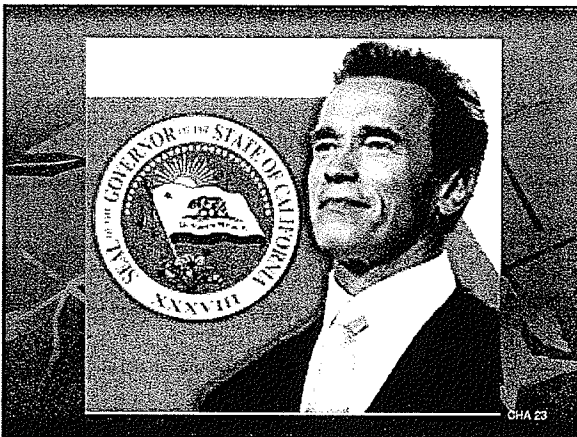
CHA Nurse Staffing Ratio Survey

| | Date Summary Report | Weeks of 01/05/04 - 06/28/04 | Weeks of 06/28/04 - 07/05/04 |
|-----|---|--|---|
| | Total Records in Sample | 6645 | 230 |
| 1.0 | Ratio beds care of services of case and/or unit of service/ Any Unit of Service | Yes = 32% No = 68% N = 6623 | Yes = 26% No = 74% N = 220 |
| 2.0 | ED level of diversion, or requested to do so | Yes = 33% No = 67% N = 4172 | Yes = 29% No = 71% N = 189 |
| 3.0 | Average ED wait time compared to similar week last year | Longer = 32% About the same = 58% Shorter = 6% N = 4895 | Longer = 33% About the same = 51% Shorter = 7% N = 186 |
| 4.0 | Ratio requirements always met - in Every Unit, Every Shift | Always = 15% Not Always = 85% N = 6626 | Always = 14% Not Always = 86% N = 227 |
| 5.0 | Approximate number surgeries postponed | Average = 0.18 N = 963 | Average = 0.11 N = 23 |
| 6.0 | Unable to transfer patients from ED | Yes = 25% No = 74% N = 5189 | Yes = 19% No = 81% N = 170 |
| 6.1 | Due to inability to meet ratios | Yes = 57% No = 43% N = 748 | Yes = 36% No = 64% N = 22 |

California "Healthcare" Association Files Lawsuit 12/30/03

- Did not seek delay or repeal of ratios
- Asked court to change DHS interpretation
- "at all times" not supported by administrative record or UCD study
- Hearing held 05/14/04
- SEIU and CNA filed for intervenor status
- Court supports DHS
- No appeal

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Governator Steps In

- 1/12/04 – Emergency regulation package filed
 - 1:5 ratio delayed until 2008
 - Emergency departments granted some flexibility
 - "At all times" applies only if nurse is not present on unit
- 12/21/04 – CNA files suit alleging Governor acted illegally

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Lawsuit (cont'd)

- 03/04/05 – Hearing regarding Governor's actions
 - CNA requests preliminary injunction to:
 1. Prevent emergency regulations
 2. Stop development of revised permanent regulations
- Judge granted #1, declined decision on #2
- 03/14/05 – Judge signed order implementing 1:5 ratios

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Lawsuit (cont'd)

- 03/15/05 – DHS/CHA file notice of appeal
- 03/17/05 – DHS/CHA file request for postponement – Denied
- 05/27/05 –
 - Court files final decision: court supports CNA, saying Governor acted illegally
 - DHS/CHA appeal
 - Permanent regulations on horizon

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What's Happening – or Not Happening Now

- Care delayed and units closing
- Ambulances shopping for hospitals
- DHS silent
- Waiting for DHS to issue permanent regulations (Another court battle?)
- Election 2006
- Emergency Services and Tobacco Tax Act

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