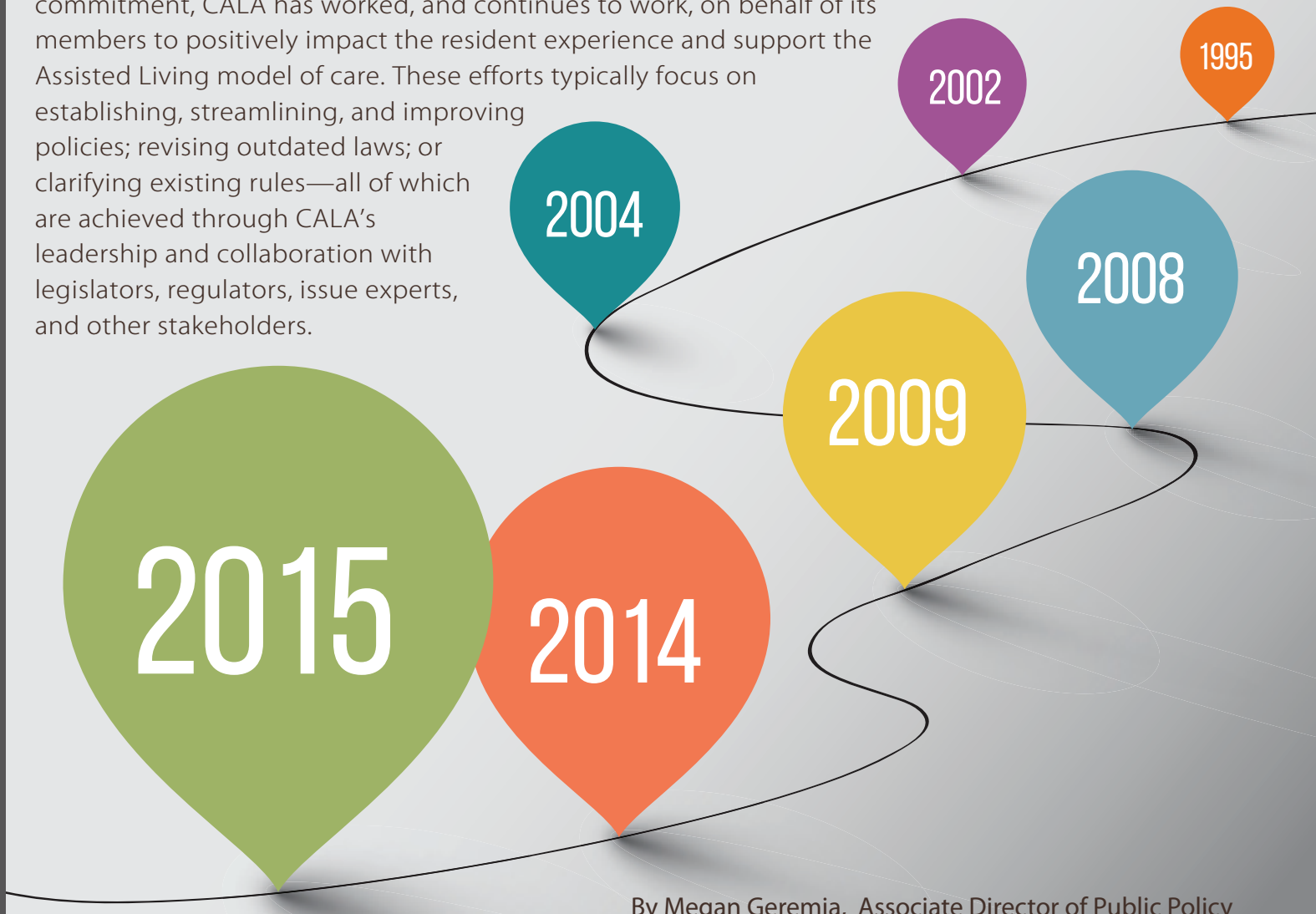
assisted living ADVOCACY HISTORY

CALA'S IMPACT ON **RESIDENT LIVES**

Over the last 20 years, CALA members have been committed to providing a vibrant Assisted Living experience for their residents. Fostering this commitment, CALA has worked, and continues to work, on behalf of its members to positively impact the resident experience and support the Assisted Living model of care. These efforts typically focus on establishing, streamlining, and improving policies; revising outdated laws; or clarifying existing rules—all of which are achieved through CALA's leadership and collaboration with legislators, regulators, issue experts, and other stakeholders.



By Megan Geremia, Associate Director of Public Policy

This timeline highlights CALA's most significant advocacy successes, along with commentary by Joel Goldman on real-life implementation of new laws and practical implications for providers. As CALA anticipates future legislative issues, we will continue this important work of enhancing the resident experience and strengthening the Assisted Living model of care.

ADVOCACY TIMELINE

1995 SECURED PERIMETERS

Led by CALA members before CALA was officially formed, ***SB 732*** was signed into law to allow secured perimeters in Assisted Living. This was a significant victory in caring for residents with dementia who exhibit unsafe wandering behaviors.

JOEL GOLDMAN: Ironically, there still seems to be some confusion regarding the distinction between a locked/secured memory care building or unit and one that has delayed egress. For a locked or secured building/unit, the written consent of the resident is required unless the resident is conserved. As few residents are conserved, this requires the signature of the residents themselves even if they are not able to understand what they are signing. Providers sometimes neglect to have residents sign this consent (similar to the consent required to wear an egress alert device) thinking that it is acceptable to have an agent under a power of attorney do so. In addition, a number of LPAs have recently demanded that Residential Care Facilities for the Elderly (RCFEs) obtain signatures of residents living in delayed egress buildings, mistakenly believing that delayed egress equates to a secured unit. As I just confirmed with Ley Arquisola, Program Administrator for the Adult and Senior Care Program of the Community Care Licensing Division (CCLD), this is not correct. No resident consent is required for a delayed egress building or unit.

2000 NEW REQUIREMENTS FOR DEMENTIA CARE

CALA teamed with the Alzheimer's Association to sponsor ***AB 1753***, which established new dementia care training and disclosure requirements. This bill was one of the first in the nation to concentrate on providing specialized training to those caring for people with dementia.

2002 HOSPICE CARE PERMITTED IN RCFES

After years of discussion and debate with legislators and CCLD, CALA successfully advocated for ***AB 1961***, which changed the law to allow a resident receiving hospice care to move into and remain in an Assisted Living community. Previously, seniors who chose to receive hospice care were forced to move into a nursing home or other setting.

JOEL GOLDMAN: The hospice law has undergone quite an evolution. When first enacted, only residents who had been in an RCFE for more than six months were permitted to go on hospice. Then it was changed to any existing resident, regardless of length of time. However, someone could not enter an RCFE while on hospice. Now, of course, RCFEs can admit a resident who is already on hospice. Perhaps the most dramatic change, however, has been with respect to prohibited conditions for hospice residents. Following enactment of the law in 2002, the Department of Social Services (DSS) for many years interpreted the law to obviate the need for exceptions in order for an RCFE to retain a hospice resident with a prohibited condition. A few years back, DSS reversed its position and began to require exceptions for, among other things, total care. Fortunately, the regulations adopted in 2015 (see timeline) take us back to better times. RCFEs do not need an exception to retain a hospice resident with a prohibited condition as long as the resident's needs are being met through the joint efforts of the RCFE and hospice agency.

2003 CALLING HOSPICE IN LIEU OF 9-1-1

Further refining hospice care requirements in RCFEs, CALA co-sponsored ***AB 1166*** with the California Association of Homes and Services for the Aging (CAHSA) and the California Hospice and Palliative Care Association (CHAPCA) to clarify how to treat emergency situations involving residents on hospice. This bill permitted licensees and/or staff of RCFEs with hospice waivers to contact the hospice agency in cases of life-threatening emergencies involving the hospice client/resident when certain criteria are met.

JOEL GOLDMAN: It is important to note that this exception only pertains if the emergency is related to the expected course of the resident's terminal illness. For emergencies not directly related to the expected course of the resident's terminal illness, staff must still call 9-1-1. The foregoing has consistently been the policy of DSS. However, until the hospice regulations were revised earlier this year (see timeline), this was merely a policy—and there were frequent disputes with families who did not want 9-1-1 called. The inability of RCFEs to point to a specific regulation exacerbated those disputes. The new regulation should help reduce this problem.

2002 NOTICE OF RATE CHANGES

SB 1898 sought to ensure residents and family would receive advance notice of changing rates and prohibited lump sum fees. However, as introduced, the bill's provisions would have been unworkable for providers. CALA worked with the author and other stakeholders, allowing for its final provisions to be both consumer-friendly and workable for licensees.

JOEL GOLDMAN: I still need to guide clients so that rate increase notices meet the requirements of ***SB 1898***. We are required to include the reasons for the rate increase and the costs associated with the increase. I confess that I have never really understood the difference between "reasons for" and "costs associated with" the increase, but it is important for rate increase letters to contain that explanation. This is true for any increase—whether it be the base rate, levels of care, or even prices charged for things like guest meals.

2003 DETAILED ADMISSION AGREEMENTS

SB 211, sponsored by California Advocates for Nursing Home Reform (CANHR), focused on mandating admission agreement disclosures, the admission process, and related postings. CALA opposed the original version of the bill as it demanded that licensees perform unreasonable disclosures and procedures during the admission process. After working closely with other stakeholders, the bill's final admission agreement requirements were feasible for licensees, and CALA was able to take a neutral position.

2004 NO EXCEPTIONS FOR RESTRICTED CONDITIONS

Via an update to the regulations on restricted conditions, CCLD removed the need for licensees to submit exception requests for the care of restricted conditions and instead put the requests into regulations. CALA advocated for this change to improve consistency and make the requirements for restricted conditions clear to licensees and regulators.

JOEL GOLDMAN: This is one that people sometimes forget about—but this really had a profound impact on providers. Prior to this change, we needed exceptions constantly. You needed an exception for a half bed rail, a stage one pressure sore, a diabetic resident, a resident with a catheter, or a resident on oxygen. DSS was being inundated with exception requests and, as a result, rarely got around to processing any of them. I recall Martha Mills, then the Statewide Program Director, standing in front of the audience at the 2004 CALA Conference & Trade Show and announcing the change to a standing ovation. She noted that when DSS looked back over the years, there had been, for example, thousands of exception requests for a half bed rail, none of which had ever been denied. Thus, DSS came to the realization that maybe the exception process could be pared down.

2006 STRENGTHENED MEDICATION TRAINING

CALA teamed up with the Alzheimer's Association to co-sponsor ***AB 2609***, which strengthened training requirements for caregivers who assist with residents' medications. This bill, a significant step for medication practices in RCFEs, added training hours, specialized topics, an exam component of medication training, and a requirement for professional consultation.

2008 REORDERING OF REGULATIONS

By 2008, RCFE regulations had been adjusted multiple times and needed reorganization. CALA had voiced concern over the disorderliness of the regulations and called for streamlining and clarification. In response, CCLD reordered the regulations, increasing clarity and accessibility for both providers and CCLD enforcers.

JOEL GOLDMAN: After spending over 20 years memorizing most of the regulation sections, I contemplated retiring when this occurred. That being said, the new order makes a lot more sense.

ENHANCED DISASTER PREPAREDNESS

CALA worked with legislators in support of ***AB 749***, which sought to ensure the wellbeing of RCFE residents and staff during emergencies. By requiring that all RCFEs have comprehensive disaster plans that address different scenarios, this legislation codified many existing requirements and common best practices.

POLST IN RCFES

In an effort to ensure that a resident's end-of-life wishes are honored, CALA supported ***AB 3000***. This bill amended the Probate Code to include POLST as a "request regarding resuscitative measures."

2009 CLARIFICATION OF "BEDRIDDEN"

Working closely with the Office of the State Fire Marshall, the Alzheimer's Association, and other stakeholders, CALA sponsored ***AB 762*** to clarify fire clearance rules for bedridden RCFE residents. Specifically, CALA led this fight to preserve access and prevent institutionalization for those who simply need a hand getting out of bed. Before this clarification of "bedridden", mislabeling of residents' conditions was leading fire inspectors to deny fire clearances, which then triggered eviction notices. For purposes of fire clearance, the bill changed the law so that RCFE residents who need assistance transferring to and from bed are considered nonambulatory. Only residents who need assistance in turning or repositioning in bed are considered bedridden for fire clearance purposes.

JOEL GOLDMAN: This was a huge win for CALA. The "bedridden" problem was becoming a scourge for providers. As care needs increased, we were seeing a significant percentage of residents who needed assistance transferring to and from bed. While these residents were still clearly able to live in an RCFE, whether or not they were evicted was left almost entirely up to the whim of the local fire marshal. We had fire marshals in some jurisdictions granting bedridden status to the entire community and fire marshals in other jurisdictions allowing for few, if any, bedridden residents. This re-defining of what constitutes bedridden allowed most RCFEs to obtain sufficient bedridden capacity from the fire marshal and substantially reduced the number of residents who may have been forced to an institutional setting.

2010 NO MORATORIUM ON ISSUING LICENSES

After years of deep budget cuts, CCLD was drowning in its workload and proposed implementing a moratorium on issuing RCFE licenses. CALA led the charge to alert the Legislature, Governor, and CCLD of how the proposed licensing moratorium could block access to care and services for California's seniors. CALA's concerns were heard and the proposal was dropped, allowing for the processing of licensing applications to continue.

2013 CHARGES AFTER DEATH OF A RESIDENT

CALA sponsored ***AB 261***, which provided clarification on the termination of an admission agreement and the charging of fees upon the death of a resident.

2014 THE MOST IMPACTFUL YEAR FOR ASSISTED LIVING LEGISLATION

Of the last 20 years, 2014 was the most impactful year for Assisted Living legislation and CALA's efforts led to significant legislative victories in different policy areas.

COMPREHENSIVE INCREASES TO RCFE TRAINING

CALA sponsored ***AB 1570*** and worked closely on ***SB 911***, which together greatly strengthened and increased training for caregivers, staff assisting with medication, and administrators:

- Initial caregiver training was quadrupled to 40 hours, and ongoing caregiver training was greatly increased, to better meet the needs of today's residents. This includes expanding dementia care training to all caregivers during both initial and ongoing training.
- Initial and ongoing medication training was increased for staff assisting with medication in RCFEs of all sizes.
- Initial administrator training was doubled to 80 hours and the administrator certification exam was increased from 40 questions—the same number for a decade—to 100 questions on current regulations and statute.

LIABILITY INSURANCE REQUIRED OF ALL RCFES

CALA supported ***AB 1523*** requiring all RCFEs to carry liability insurance of at least $1 million per occurrence and $3 million in the annual aggregate.

SUSPENSION ON ADMISSIONS

CALA supported ***SB 1153,*** which authorized CCLD to suspend new RCFE admissions under certain circumstances, including uncorrected violations or unpaid fines. This suspension, similar to provisions in other states, allows for an interim step before revocation action.

2015 DISCLOSURES FOR LICENSURE PROCESS

AB 601, which required extensive disclosures during the licensure process, was introduced with provisions that would have posed administrative impossibilities for providers and CCLD, as well as threatening investment in Assisted Living. CALA worked closely with the author and other stakeholders on refining this bill, making its final disclosure requirements more practical.

STREAMLINED APPEAL PROCESS

CALA worked extensively on ***AB 1387*** to streamline and improve the efficiency of the CCLD appeal process. Effective January 1, 2016, all licensees will have: an additional five days to file the appeal; an expectation of clarity in inspection reports; an expectation of CCLD's decision within 60 days of all info being submitted; and a two-step rather than four-step process.

JOEL GOLDMAN: I am looking forward to seeing how this plays out in practice. One of my greatest frustrations over the years has been the time frame for DSS to respond to appeals; there has been none until now. I have had appeals linger for years, and in one case, for an entire decade. An even greater frustration has been the unwillingness of some Licensing Program Managers (LPM) to grant a fair review of appeals. In many cases, we have been submitting appeals to an LPM who ordered the LPA to cite the RCFE in the first place. The new 60-day time frame should ensure that we receive a timely response, and the direct appeal to the Regional Manager should afford us a more realistic opportunity to have meritorious appeals granted.

2014

UPDATES TO CIVIL PENALTIES

Untouched for many years, the RCFE civil penalty structure underwent a needed change with CALA-sponsored ***AB 2236***. Specifically, the most severe types of civil penalties were significantly increased from what was considered a shockingly low and out-of-date $150 amount. While last-minute amendments caused CALA to remove sponsorship, the original intent of the bill was still achieved.

BUILDING & DISASTER AND CPR TRAINING

CALA worked closely with the author of ***AB 2044***, which originally would have posed problems for providers by diluting caregiver training requirements, implementing a confusing complaint investigation, and imposing arbitrary staff ratios to RCFEs. Through collaboration with the author and other stakeholders, the bill ultimately focused on caregiver training, expanding building and disaster training to all RCFE staff and requiring all RCFEs to have at least one CPR-trained staff on the premises at all times.

CODIFICATION OF RESIDENT RIGHTS

AB 2171 began the legislative session as a bill that would have created a private right of action and put licensees in the position of ignoring physician medication orders for certain classes of drugs. After extensive work with the author, as well as other legislators and stakeholders, CALA was able to support the bill as it largely codified and reorganized existing resident rights and added certain disclosures during the admission process.

JOEL GOLDMAN: If CALA ever needed to justify its existence, it did so with respect to AB 2171. As Megan notes, that bill started out including a "private right of action." That basically means that an RCFE could have been sued every time it violated any regulation, even if no one was injured as a result. Thanks to CALA and its allies, I do not believe that 2171 will prove to be problematic.

LONG-AWAITED BUDGET INCREASE TO DSS

CALA worked with CCLD, the Legislature and the Governor to successfully reach a significant boost to CCLD funding through the 2014-2015 State Budget. The significant increase in funding resulted in many positive changes to rebuild CCLD's internal systems including:

- A total of 71.5 new staff, including an RN for medical expertise
- Expanded LPA training and online LPA testing
- Creation of the Quality Assurance Unit
- A centralized complaint line and unit
- CCLD procedures to minimize resident transfer trauma
- CCLD oversight of temporary management of distressed RCFEs
- Centralized application unit

JOEL GOLDMAN: First, I have to say that I hope that we never experience another year like 2014. Second, with most of these new laws just taking effect this past year, and some of them not until January 2016, we cannot yet gauge what impact all of this will have. It is critical for RCFEs to make certain their administrators and other managers are aware of these new laws.

2015

ANNUAL LICENSING INSPECTIONS

CALA lobbied aggressively on our top legislative priority: increasing the frequency of RCFE inspections. After many years and multiple legislative efforts, the 2015-2016 State Budget provided funding to increase RCFE inspections, which previously were only guaranteed to take place once every five years. The new inspection cycle will be increased to once every three years by January 2017, once every two years by 2018, and *annually by 2019*.

UPDATE TO HOSPICE REGULATIONS

CALA submitted public comments on CCLD's proposed updates to the hospice regulations, shaping the final hospice regulation package which took effect on July 1, 2015. Before the updates to the regulations, CALA had voiced concern over issues with total care exceptions. In turn, the new regulations removed the need for exceptions on prohibited conditions, including total care, as long as the prohibited conditions are addressed in the hospice care waiver. Other key updates included aligning the regulations with existing hospice statue to clarify the need to call 9-1-1 in certain situations when a resident is on hospice, and that a prospective resident already receiving hospice care may be admitted as a resident.

JOEL GOLDMAN: One of the things that strikes me as I comment on not only current legislation, but prior bills as well, is that the RCFE regulations in most cases do not reflect the changes in law. I see too many instances in which RCFEs are being cited even though they have complied with everything in Title 22 but they have failed to respond to recent—or, in some cases, not so recent—legislation. If licensees focus only on Title 22, they will miss many key provisions that affect how they are supposed to operate. ■

Joel Goldman is a partner at Hanson Bridgett, founding board member of CALA, and nationally known expert on Assisted Living.