



retrieve all the laid-off employees should the initiative eventually be invalidated. The term limits provision would remain intact, pending the Supreme Court's ruling on the merits of the initiative, which is expected this fall. At this writing, with the jobs of 160 OAG employees on the line, the motion for stay is pending before the California Supreme Court.

## COMMISSION ON CALIFORNIA STATE GOVERNMENT ORGANIZATION AND ECONOMY (LITTLE HOOVER COMMISSION)

*Executive Director:*

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The Little Hoover Commission was created by the legislature in 1961 and became operational in the spring of 1962. (Government Code sections 8501 *et seq.*) Although considered to be within the executive branch of state government for budgetary purposes, the law states that "the Commission shall not be subject to the control or direction of any officer or employee of the executive branch except in connection with the appropriation of funds approved by the Legislature." (Government Code section 8502.)

Statute provides that no more than seven of the thirteen members of the Commission may be from the same political party. The Governor appoints five citizen members, and the legislature appoints four citizen members. The balance of the membership is comprised of two Senators and two Assemblymembers.

This unique formulation enables the Commission to be California's only truly independent watchdog agency. However, in spite of its statutory independence, the Commission remains a purely advisory entity only empowered to make recommendations.

The purpose and duties of the Commission are set forth in Government Code section 8521. The Code states: "It is the purpose of the Legislature in creating the Commission, to secure assistance for the Governor and itself in promoting economy, efficiency and improved service in the transaction of the public business in the various departments, agencies, and instrumentalities of the executive branch of the state government, and in making the operation of all

state departments, agencies, and instrumentalities and all expenditures of public funds, more directly responsive to the wishes of the people as expressed by their elected representatives...."

The Commission seeks to achieve these ends by conducting studies and making recommendations as to the adoption of methods and procedures to reduce government expenditures, the elimination of functional and service duplication, the abolition of unnecessary services, programs and functions, the definition or redefinition of public officials' duties and responsibilities, and the reorganization and or restructuring of state entities and programs. The Commission holds hearings about once a month on topics that come to its attention from citizens, legislators, and other sources.

### MAJOR PROJECTS:

*Skilled Nursing Homes: Care Without Dignity* (April 1991) is part of the Commission's long-term study of the quality of care available to California's elderly population. Related Commission reports have reviewed community care (1983) and residential care (1989 and 1991) for the elderly. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 47 for details.)

According to the Commission, almost 120,000 Californians are spending their final days in 1,200 skilled nursing facilities (SNFs) which are licensed and monitored by the California Department of Health Services (DHS). SNFs provide care for elderly residents who are no longer independent and need constant care. California spends almost \$2 billion in Medi-Cal payments to SNFs, which is 25% of the health care budget for about 2% of the caseload.

Since 1976, the Commission has periodically examined DHS' role in regulating skilled nursing facilities and published *The Medical Care of California's Nursing Home Residents: Inadequate Care, Inadequate Oversight* (February 1989). (See CRLR Vol. 9, No. 2 (Spring 1989) pp. 38-39 for a summary of this report.) Since then, the Commission has successfully sponsored legislative reforms to improve standards, strengthen fines and penalties for violations, protect complainants' rights, and create more public access to SNF information.

Despite legislative victories, however, the Commission expressed continuing concern that the system is faltering and the elderly are still subject to abuse and neglect in SNFs. The Commission based its 1991 report on complaints, interviews with experts, and investiga-

tion of records. Complaints from advocates for the elderly and from the families and friends of SNF residents cite limited enforcement of regulations, the close association between the state licensing process and the nursing home industry, and the state's failure to implement federal nursing home reforms required by the Omnibus Budget Reconciliation Act of 1987 (OBRA 87). (See *infra* agency report on BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS for related discussion; see also CRLR Vol. 11, No. 2 (Spring 1991) pp. 94-95 for background information.) According to the Commission, California dismissed the OBRA 87 regulations as little more than added paperwork that would cost upward of \$400 million without improving the quality of SNF care in California. But the Commission maintains that well-founded complaints indicate the need for California to meet OBRA 87's improved standards.

In its report, the Commission made three findings and seven recommendations. First, the report found that California, by failing to implement the OBRA 87 reforms, has threatened the health, safety, and well-being of SNF residents and jeopardized federal funding for Medi-Cal. The report recommended that California take immediate steps to comply with the federal standards.

Second, the report noted that 68% of California SNF residents are physically or chemically restrained, a statistic that greatly exceeds that of any other state, and found that DHS has failed to define a resident's right to informed consent for restraints. The report recommended legislation to ensure that SNF residents participate in treatment planning and have an opportunity to give (or withhold) informed consent for physical and chemical restraints. Other recommendations include legislative restriction of medications frequently abused in SNFs; DHS creation of a Medi-Cal drug approval system for long-term care patients; and DHS tracking of the number of SNF residents who are restrained, those unable to give informed consent, and those without a representative.

Additionally, the Commission noted that since its first 1983 SNF study, it has strongly recommended a meaningful system of citations and fines to support the state's efforts to improve the quality of care provided to the elderly. Despite some reforms, the Commission still found evidence of a massive amount of uncollected fines, uneven enforcement of violations, a widespread perception



that citations can be bargained away, DHS nonresponsiveness to complaints, and some systematic barriers to efficient and effective enforcement. The Commission found that California's citation and fine system is not an effective deterrent to poor quality SNF care, and recommended legislative reform of the citation and fine system to increase its deterrent value. The report also recommended that DHS investigate and respond to complaints promptly and keep complainants informed of all steps taken.

In summary, the Commission recommended compliance with the OBRA 87 federal standards, ensuring the right to informed consent for the elderly, and more vigorous enforcement of citations and fines.

*Cal-EPA: An Umbrella for the Environment* (June 1991). On May 22 and 23, the Commission held hearings on Governor Wilson's plan to consolidate a variety of environmental regulatory functions now scattered among different state agencies into a California Environmental Protection Agency (Cal-EPA). (See CRLR Vol. 11, No. 2 (Spring 1991) p. 134 for background information.) Governor Wilson claims the newly organized Cal-EPA will have a single point of accountability for all major state environmental programs. Under Wilson's plan, Cal-EPA would be headed by a cabinet-level Office of the Secretary for Environmental Protection, and would include (1) a new Office of Environmental Health Hazard Assessment, to oversee risk assessment and implementation of Proposition 65, the 1986 anti-toxic chemicals initiative; (2) a Department of Toxic Substances Control, responsible for the regulation and clean-up of hazardous waste; (3) the Department of Pesticide Regulation, to include the existing pesticide regulation program of the California Department of Food and Agriculture; and (4) three existing environmental boards (the Air Resources Board, the Water Resources Control Board, and the California Integrated Waste Management and Recycling Board), with board members and policy remaining unchanged.

The Commission's June report was based on testimony received during the two days of public hearings, a review of related literature, and interviews of experts. While concluding that the Cal-EPA plan should be implemented, the report made several recommendations, including the following:

-All environmental risk assessment functions should be placed within one

Cal-EPA unit, and the Cal-EPA Secretary should establish uniform risk assessment procedures and guidelines.

-The Governor and legislature should implement legislation ensuring that the formation of environmental policies is conducted by way of a risk management decisionmaking process considering all potential risks, benefits, and costs—including input from the public, those regulated, and other state entities.

-Cal-EPA should create a uniform and timely permit process and a uniform hearing and appeals process for all environmental protection entities, and should undertake a comprehensive overhaul of environmental regulations.

-Within six months, Cal-EPA should report to the Governor and legislature about the feasibility, desirability, and consequences of bringing other state programs into Cal-EPA. The report cited a number of state environmental programs—including DHS' Radioactive Materials Program, Hazardous Materials Laboratory, and Office of Drinking Water, and the Office of Emergency Services' Hazardous Materials Management Program—which are excluded from Cal-EPA.

-Finally, the report noted that prevention of pollution is a goal of the Cal-EPA plan, and recommended that the legislature create an Office of Pollution Prevention.

The Commission also reviewed cost information about the consolidated agency, and noted that Cal-EPA expects to derive funds largely from the budgets of the three independent agencies being moved into Cal-EPA. The report noted that without budgetary detail unavailable to the Commission, the cost-effectiveness of Cal-EPA is difficult to assess.

Pursuant to Government Code section 12080 *et seq.*, which allows the Governor to reorganize state government, the complete plan will next be submitted to the legislature, where it may be approved or vetoed but not amended.

*Recent Hearings.* On March 20, the Commission held the third and final hearing on elder care. The final hearing focused on nursing care at home. The Commission hopes to complete and release its report on home nursing care in August 1991.

On April 25, the Commission held a public hearing on the coordination of drug use prevention programs. Commission staff estimates that this report will be released in September or October 1991.

## DEPARTMENT OF CONSUMER AFFAIRS

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In addition to its functions relating to its 38 boards, bureaus, and commissions, the Department of Consumer Affairs (DCA) is charged with carrying out the Consumer Affairs Act of 1970. The Department educates consumers, assists them in complaint mediation, advocates their interests before the legislature, and represents them before the state's administrative agencies and courts.

### MAJOR PROJECTS:

*DCA Moves.* In May, DCA moved to its new offices located at 400 R Street, Sacramento, California 95814.

*Governor Announces DCA Appointments.* Shortly after announcing the appointment of James Conran as DCA Director (see CRLR Vol. 11, No. 2 (Spring 1991) p. 48 for background information), Governor Wilson announced twelve new appointments to DCA in early May; the Governor also announced that two prior appointees will be continuing in their positions. All of the new appointees are Republicans. Director Conran has announced that he expects DCA to take an aggressive approach to consumer service, choice, and protection under his leadership. The new appointments are viewed by many as part of Conran's DCA "housecleaning" efforts.

*DCA Takes a Stand on Caller ID.* DCA Director Jim Conran presented written testimony in the Public Utilities Commission's (PUC) April hearings on a variety of new telephone technologies that could soon be available to consumers. The most controversial of the technologies is Caller ID, a service which automatically displays the phone number of a caller on a special device attached to the phone of the recipient before the call is answered. (See reports on TURN and PUC for related discussions of Caller ID.) Pacific Bell, GTE of California, and Contel, the three largest telephone companies in the state, want to begin offering this service to their customers. DCA, the Commission's own Division of Ratepayer Advocates, and a number of public interest organizations argue that the proposed service has flaws and should not be offered in its present state. In his testimony, Conran argued that Caller ID poses privacy and personal safety problems for consumers. Although customers would be able to