SENATE HEALTH
COMMITTEE ANALYSIS
Senator Elaine K. Alquist, Chair

BILL NO:	**AB 950**	**A**
AUTHOR:	**Hernandez**	**B**
AMENDED:	**June 3, 2010**	
HEARING DATE:	**June 30, 2010**	**9**
CONSULTANT:		**5**
Dean/		**0**

SUBJECT

Hospice providers: licensed hospice facilities

SUMMARY

This bill establishes a new health facility licensing category of hospice facility, and permits a licensed and certified hospice services provider to provide inpatient hospice services through the operation of a hospice facility, either as free-standing health facility, or adjacent to, physically connected to, or on the building grounds of another health facility or a residential care facility.

CHANGES TO EXISTING LAW

Existing law:
Existing law provides for the licensure and regulation by the Department of Public Health (DPH) of persons or agencies providing hospice services, and defines hospice as a specialized form of interdisciplinary health care that is designed to provide palliative care, alleviate the physical, emotional, social, and spiritual discomforts of an individual diagnosed with a terminal illness, and provide supportive care to the primary caregiver and the family.

Existing law requires that, to the extent appropriate, hospice services are provided in the patient's home or primary place of residence, based on the medical needs of the patient. Existing law also requires hospices to make arrangements for inpatient care as needed by the patient.

Existing law establishes DPH Licensing and Certification (L&C) program fees for hospices and health facilities.

This bill:
This bill establishes a new category of hospice facility to be licensed by DPH L&C, through which a licensed and certified hospice provider would provide inpatient care to

hospice patients. The bill requires the hospice facility licensure fee to be equivalent to the licensure fee for a congregate living health facility (CLHF) in the first year of hospice facility licensure, and to be set thereafter pursuant to state law that establishes fees based on DPH L&C costs.

This bill establishes minimum requirements for services that a hospice facility must provide to its patients, including minimum nursing staff hours, direct care staff-to-patient ratios, inclusion of palliative care services, patient rights, and disaster preparedness, among other requirements.

This bill requires DPH to adopt regulations that establish the standards for the provision of these minimum services. Until DPH adopts regulations, this bill permits DPH to use the federal Medicare Conditions of Participation for Hospice Programs, set forth in Title 42 of the Code of Federal Regulations Section 418 et seq., as the basis for hospice facility licensure.

This bill requires the hospice facility to meet fire protection standards set forth in the federal Medicare Conditions of Participation for Hospice Programs. The bill also requires hospice facilities to meet the same local building code standards as congregate living health facilities (CLHFs), as defined in the California Health and Safety Code.

This bill requires hospice facility regulations adopted by DPH to apply uniformly throughout the state, and prohibits local jurisdictions from adopting or enforcing local rules and regulations that are inconsistent with the rules and regulations of hospice facilities.

This bill requires hospice facility licensees to obtain and pay for the criminal background checks for employees, volunteers, and contractors in accordance with federal Medicare Conditions of Participation regulations, and as may be required by state law.

FISCAL IMPACT

According to the Assembly Committee on Appropriations analysis of a prior but similar version of the bill, the fiscal impact was estimated to include one-time fee-supported special fund costs of $250,000 to DPH to promulgate regulations and to license 5 to 10 free-standing hospice facilities. The analysis also stated that there were unknown potential savings to Medi-Cal to the extent that patients would shift from inpatient medical intervention-heavy settings to hospice.

BACKGROUND AND DISCUSSION

Purpose of bill

According to the author, when hospice services are provided within another licensed health, or residential care facility, the hospice provider is dependent on the licensed health, or residential care, facility for much of the patient's care, which can lead to

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discontinuity of care. According to California Hospice and Palliative Care Association (CHAPCA), the sponsor of this bill, hospice providers must contract with other licensed facilities to provide inpatient hospice care which can create conflicts in regulatory oversight and philosophies of care. According to the author, this bill would allow a licensed and certified hospice program to operate a licensed hospice facility under a new licensing category. The author contends that the new hospice facility license category would create another option for patients, and would allow hospice programs to operate their own facility with standards that are unique to hospice care. Furthermore, the author asserts that the bill maintains the portability of hospice services, which would continue to be available to patients in their own homes or within other licensed facilities.

Hospice

Hospice services include four levels of care – routine home care, continuous home care, inpatient respite care, and general inpatient care – that are provided to its patients, caregivers, and family members.

Routine home care and continuous home care can be provided in the hospice patient's home, which can include a licensed health or residential care facility through a contract with a hospice program.

Currently, when a hospice patient in California needs inpatient respite care because the patient's caregiver needs a short break, most hospices must contract with a licensed health facility (hospital, skilled nursing facility or congregate living health facility) or with a licensed residential care facility for the elderly (RCFE), which is licensed by the Department of Social Services (DSS) and which has a Hospice Waiver from DSS in order to provide these services.

When a hospice patient needs general inpatient care due to the need for 24 hour pain control and symptom management, hospices generally must contract with a licensed health facility. RCFEs are prohibited under their Hospice Waiver from having general inpatient hospice patients, due to the high acuity level of these patients.

According to the author and sponsor, the provision of hospice care within other licensed facility settings leads to confusion and a lack of assurance that quality end-of-life care is being provided to patients in need of inpatient care.

Current inpatient hospice settings in California

While a specific hospice facility license does not presently exist in California, several licensed and certified hospice programs currently own and operate inpatient facilities, licensed by DPH under a Special Hospital: Hospice license, or a congregate living health facility license. The Special Hospital: Hospice license category was established in 1980 as a pilot project to determine the need of hospice patients for acute inpatient hospital care. According to CHAPCA, at least one hospice, San Diego Hospice, owns and operates a 24-bed inpatient facility under this license category. According to DPH, 11 hospice programs operate inpatient facilities throughout California under the Congregate

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Living Health Facility (CLHF) license category.

CLHFs provide inpatient care to persons who are diagnosed with a terminally illness or a life-threatening illness, who are catastrophically and severely disabled, and/or who are mentally alert but physically disabled within a non-institutional, homelike residential setting. The care is generally less intense than that provided in general acute care hospitals but more intense than that provided in skilled nursing facilities.

CLHFs that are operated by a city or county are permitted to have a maximum of 59 beds. CLHFs that are not operated by a city or county are permitted to have a maximum of 12 beds, or if the CLHF is located in a county with a population of 500,000 or more, 25 beds is the maximum number permitted.

According to CHAPCA, CLHFs and other licensed facilities are subject to various regulations that are inconsistent with the hospice philosophy of care. CHAPCA further asserts that the CLHF license bed limit requirement and the requirement that CLHFs can only be freestanding, make operating an inpatient facility cost-prohibitive under this license category.

Related bills
SB 1164 (Corbett) requires the definition of congregate living health facility to include facilities that provide services to children who have a diagnosis of terminal illness or a diagnosis of life-threatening illness. *In Senate Health Committee, put over at the request of the author.*

Prior legislation
AB 1142 (Salas) of 2007 requires the Department of Public Health to select and distribute end-of-life and palliative care model programs to nursing home and residential care for the elderly facilities. *Vetoed by the Governor.*

AB 892 (Alquist), **Chapter 528, Statutes of 1999**, requires all health plans to offer as an explicit hospice benefit, that patients may elect to receive care in a licensed, certified hospice program. Requires reimbursement and services for this benefit to be equal to that provided by Medicare.

Arguments in support
Vitas Innovative Hospice Care supports this bill because providing inpatient hospice care within other licensed facilities is limiting and incongruent to what hospice patients need and want at their end of life. According to Vitas, the bill would allow hospices to operate more appropriately sized facilities under a comprehensive set of federal regulations that are specific to hospice. Hospice of the Valley and Pathways Home Health and Hospice support this bill because they state it would expand the choices available to terminally ill patients and would ensure that patients receive palliative and comfort care in a homelike setting, instead of care within a hospital or skilled nursing facility that focuses on curative treatment and rehabilitation. Hoffman Hospice and Hospice of Santa Cruz County

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support the bill because it would save money by keeping terminally ill patients out of hospitals. Cottage Health System supports this bill because hospices need flexibility to provide services in their own homelike facilities, especially when a patient cannot remain at home due to unsafe conditions or lack of a caregiver.

Arguments in opposition

The Service Employees International Union (SEIU) opposes this bill unless amended to conform with existing seismic safety law. According to SEIU, the bill should require that hospice facilities comply with seismic safety under OSHPD to assure that these facilities where patients stay overnight will not collapse in an earthquake. The California Nurses Association (CNA) also opposes the bill for exempting hospice facilities from seismic safety and other building standards under OSHPD. CNA further states that the bill does not adequately address scope of practice conflicts for licensed vocational nurses, improperly bases staffing ratios on CLHF patients instead of hospice facility patients, and indefinitely substitutes federal regulations for state regulations.

PRIOR ACTIONS

(Reflects prior versions of the bill)

Assembly Floor:	70-4
Assembly Appropriations:	17-0
Assembly Health:	17-0

COMMENTS

1. Exemption from OSHPD Review of Facility Construction Plans and Seismic Safety Standards

This bill exempts all hospice facilities from OSHPD review of renovation or new construction plans, and from compliance with seismic safety standards.

OSHPD Review of Facility Construction Plans

OSHPD is responsible for overseeing all aspects of health facility construction and renovation in California, with some limited exceptions. This bill requires a hospice facility to comply with local building codes rather than OSHPD building standards. In order for the hospice facility to ensure the safety of its terminally ill patients, staff recommends amendments to:

a. Require a freestanding hospice facility above a certain size to submit plans for new construction and renovation to OSHPD for review;
b. Allow a hospice facility to co-locate only with another licensed health facility, not a residential care facility; and,
c. Require a hospice facility that co-locates with a health facility regulated by OSHPD to submit plans for new construction and renovation to OSHPD for review.

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Compliance with Seismic Safety Standards

OSHPD is responsible for ensuring the seismic safety of hospital buildings containing patients who have less than the capacity of normally healthy persons to protect themselves in the event of an earthquake. This bill exempts a hospice facility, which would be licensed to treat terminally ill patients with high acuity levels, from complying with seismic safety standards. Staff recommend amendments to:

a. Require a hospice facility to comply with seismic safety standards with exemption for the following type of hospice facility:
    1) A freestanding hospice facility that has 15 beds or fewer and that is a single-story, wood-frame, or light steel frame building.

2. Minimum staffing

This bill requires DPH to establish minimum staffing standards that mandate at least one licensed nurse to be on duty 24-hours per day and a maximum of six patients at any given time per direct care staff person. The minimum nurse staffing standards within a CLHF require at least one registered nurse to be awake and on duty for 8 hours per day, 5 days per week, and a registered nurse or licensed vocational nurse to be awake and on duty at all times. In order to ensure adequate staffing within the hospice facility, staff suggest amendments to:

a. Require the same nurse staffing standards as a CLHF, at a minimum; and
b. Define direct care staff person as a registered nurse, licensed vocational nurse, certified nurse assistant, or home health aide who is also a certified nurse assistant.

3. Patient rights

This bill requires DPH to establish certain patient rights, including full information regarding health status and options for end-of-life care, the right to refuse treatment, the right to treatment with dignity and respect, and the right to visitors of the patient's choice. Since, under certain circumstances, a patient treated within a hospice facility could be subject to room and board and other costs not covered by insurance, Medicare, or Medi-Cal, the author should amend the bill to ensure that patient rights include the right to full disclosure of hospice options, and adequate notice of any out-of-pocket costs that a patient may incur as a patient in a hospice facility.

4. Bed limit

This bill does not limit the number of beds for a hospice facility, but requires the hospice facility to provide a home-like environment that is comfortable and accommodating to both the patient and the patient's visitors. In order to ensure a home-like environment, staff suggest amendments to state that a licensed hospice facility shall be non-institutional and shall not exceed 36 beds.

5. DPH regulations

This bill requires DPH to adopt regulations that govern the provision of services by a hospice facility, and permits DPH to use federal Medicare Hospice Conditions of Participation regulations as the basis for hospice facility licensure until such time as DPH

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promulgates regulations. Since state regulations protect the health and safety of Californians, staff suggest amendments to specify a date by which DPH shall develop regulations. DPH should also be required to use federal Medicare Hospice Conditions of Participation regulations as the basis for hospice facility licensure until DPH promulgates regulations.

6. Sunset date and limited number of licenses

This bill creates a new "hospice facility" license category that has never been tested or analyzed in California. Because this is a new facility category in California with no clear state precedent, staff suggests that the bill be structured to contain a sunset date of eight years, to cap the number of licenses to be issued by DPH L&C during the first four years at twenty-four, and, after the first four years, to require DPH L&C to prepare an evaluation of licensed hospice facilities, to paid for by hospice facility license fees.

POSITIONS

Support: California Hospice and Palliative Care Association (CHAPCA)
Aging Services of California
California Catholic Conference, Inc.
Cottage Health System
Hoffman Hospice
Hospice of Santa Cruz County
Hospice of the Valley
Pathways Home Health and Hospice
Vitas Innovative Hospice Care
Several individuals

Oppose: California Nurses Association
Service Employees International Union, California

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