CONCURRENCE IN SENATE AMENDMENTS
AB 1280 (Irwin)
As Amended August 18, 2021
Majority vote

SUMMARY
Prohibits a hospice referral source from receiving, directly or indirectly, any form of payment in
exchange for referring a patient to hospice provider or facility. Requires a hospice to provide
verbal and written notice of the patient's rights and responsibilities in a language and manner the
person understands, before providing care.

Senate Amendments
Add the requirement to also provide written notice of the patient's rights and responsibilities to
the patient's representative. Defines "patient's representative" to mean either a person designated
by the patient as their representative or a person acting on the patient's behalf under the authority
of the Long-Term Care Patient Representative Program.

COMMENTS
Since 1993, hospice has been a guaranteed Medicare benefit and is a benefit included in many
private health insurance plans. In 2017, almost 1.5 million Medicare beneficiaries were enrolled
in hospice care and the number continues to grow. Hospice benefits nursing care, medical social
services, hospice aide services, medical supplies (including drugs and biologics), and physician
services. The hospice provider bills Medicare or other coverage for costs of care. Hospice care
under the Medicare Hospice Benefit requires documentation from a physician estimating a
person has less than six months to live if the disease follows its usual course. Hospice care is
intended to make terminally ill patients as physically and emotionally comfortable as possible,
and to support their families and other caregivers throughout the process. Use of hospice
continues to increase, with almost 1.5 million Medicare beneficiaries receiving hospice care in
2017, a 4.5% increase from the previous year. In California, 45% of Medicare enrollees who
died in 2017 were enrolled in hospice at the time of their death.2018 Office of the Inspector
General (OIG report). According to the United States Department of Health and Human
Services OIG report, California leads the country in the number of poorly performing hospices
including the failure to adequately assess incoming hospice patients. The Conditions of
Participation for the Medicare Hospice Program require an initial assessment of the patient that
docsuments in writing a patient-specific comprehensive assessment that identifies the patients
need for hospice care and services, and the patients need for physical, spiritual, emotional, and
psychosocial care. The OIG report found that California hospices lead the nation for enrolling
patients who are not terminally ill and claiming reimbursement for those patients not needing
hospice care and services. Predatory recruiting, when hospice providers or their representatives
target and enroll patients by using deceitful and aggressive tactics such as offering cash, gift
cards or other items of value is a growing problem. Medicare prohibits requesting or offering
inducements to influence the selection of and the decision to enter into hospice care.

Medicare and the OIG report that patients sometimes do not receive the required information
about what they are enrolling in, what they are entitled to and what they should expect to receive
under the Hospice Medicare Benefit.
Los Angeles Times investigation. In December of 2020, the Los Angeles Times published a lengthy investigative series on the hospice industry, particularly on a boom of agencies in southern California where there has been fraud and poor care. The Los Angeles Times found that over the past decade, the number of hospices in Los Angeles County has multiplied sixfold, and account for half of the authorized providers in California. The San Fernando Valley has the highest concentration of hospices in the nation, with Glendale having 60 agencies, 61 in Burbank, and 63 in Van Nuys. According to the Los Angeles Times, by comparison, the entire states of New York and Florida both have fewer than 50 each. According to the Los Angeles Times, intense competition for new patients, who generate $154 to $1432 a day in Medicare payments, has spawned a cottage industry of illegal practices, including kickbacks to crooked doctors and recruiters who zero in on prospective patients at retirement homes and other venues. According to the Los Angeles Times, for-profit agencies make up 70% of all hospices certified by CMS nationwide, but 91% of those are in California. In Los Angeles County alone, for-profit agencies account for 97% of approved agencies. The Los Angeles Times found one office building in Van Nuys was home to 15 hospice providers.

According to the Author
Hospice care is intended to make terminally ill patients as physically and emotionally comfortable as possible, and to support their families and other caregivers throughout the process. The author states that this bill will ensure that patients entering hospice care are not subject to illegal recruitment schemes, that they receive all required hospice election information in a language and manner that the patient and caregiver understands, and that the comprehensive assessment for the patient accurately identifies the patient's needs for hospice care and services.

Arguments in Support
The California Hospice and Palliative Care Association (CHAPCA) supports this bill and states that current law provides no guardrails as to who may enroll an individual into hospice care. Given that hospice enrollment eliminates continued curative medical care, this presents potential opportunities for negligence or malfeasance in unnecessarily enrolling individuals into hospice. CHAPCA notes that, obviously, this fraudulent activity should be eliminated.

Arguments in Opposition
There is no opposition to this bill.

FISCAL COMMENTS
According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

VOTES:

ASM HEALTH: 15-0-0
YES: Wood, Mayes, Aguiar-Curry, Bigelow, Burke, Carrillo, Flora, Maienschein, McCarty, Nazarian, Luz Rivas, Rodriguez, Santiago, Waldron, Calderon

ASM APPROPRIATIONS: 16-0-0
YES: Lorena Gonzalez, Bigelow, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Holden, Akilah Weber, Berman
ASSEMBLY FLOOR: 75-0-3
ABS, ABST OR NV: Cervantes, Gallagher, Medina

SENATE FLOOR: 39-0-1
ABS, ABST OR NV: Stern

UPDATED

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CONSULTANT: Lara Flynn / HEALTH / (916) 319-2097

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