SUBJECT: California Hospice Licensure Act of 1990

SUMMARY: Bans payments for hospice referrals, and, imposes requirements to ensure informed patient or family consent for hospice services.

Existing law:
1) Establishes the Hospice Licensure Act of 1990 (Act) which provides the California Department of Public Health (CDPH) with the authority to license and regulate hospice agencies. [HSC §1745, et seq.]

2) 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 who is experiencing the last phases of life due to the existence of a terminal disease, and provide supportive care to the primary caregiver and the family of the hospice patient, and that meets specified criteria including. [HSC §1746(d)]

3) Requires hospice agencies to provide the following basic services: [HSC §1749(b)]
   a) Skilled nursing services;
   b) Social services/counseling services;
   c) Medical direction;
   d) Bereavement services;
   e) Volunteer services;
   f) Inpatient care arrangements; and,
   g) Home health aide services.

4) Permits a hospice to provide interdisciplinary services, as specified, including palliative care, to a patient with a serious illness as determined by a physician, including a patient who continues to receive curative treatment from other licensed health care professionals. [HSC §1747.3]

5) Requires CDPH to issue a license to a hospice that is accredited as a hospice by an accreditation organization approved by the federal Centers for Medicare and Medicaid Services (CMS). Permits CDPH to conduct a survey of an accredited hospice to ensure accreditation requirements are met, to be conducted using a selective sample basis. Requires CDPH to retain its full range of authority over accredited hospices to ensure the licensure and accreditation requirements are met. [HSC §1751.5]

This bill:
1) Prohibits a hospice provider, employed hospice staff, or an agent for the hospice from giving payment to referral sources for the referral of patients to the hospice.
2) Prohibits a hospice salesperson, recruiter, agent, or employee who receives any form of compensation or remuneration for hospice referrals or admissions from providing consultation on hospice services, hospice election, or informed consent to a patient, patient’s family, or patient’s representative.

3) Requires the election of hospice, informed consent, completed signatures, and counsel on the election of hospice to a patient, patient’s family, or patient’s representative to only be completed by a registered nurse, licensed vocational nurse, medical social worker, chaplain, or counselor employed by the hospice.

4) Defines “payment” to mean anything of value, including cash, gift cards, prepaid cards, or remuneration of any kind.

5) Defines “referral source” to mean a medical or nonmedical entity or medical or nonmedical provider that refers a patient, patient’s family, or patient’s representative to a hospice provider for a consultation or any other reason.

6) Requires during the initial visit, in advance of furnishing care, a hospice to provide a patient or the patient’s representative with verbal (spoken) and written notice of the patient’s rights and responsibilities in a language and manner that the patient understands.

**FISCAL EFFECT:** According to the Assembly Appropriations Committee analysis, costs to CDPH are expected to be minor and absorbable (Licensing and Certification Fund).

**PRIOR VOTES:**

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<tr>
<th>Assembly Floor</th>
<th>75 - 0</th>
</tr>
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<tbody>
<tr>
<td>Assembly Appropriations Committee</td>
<td>16 - 0</td>
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<tr>
<td>Assembly Health Committee</td>
<td>15 - 0</td>
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</tbody>
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**COMMENTS:**

1) **Author’s statement.** 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. This bill will ensure that patients entering hospice care are not subject to illegal recruitment schemes, that they received 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. We have a responsibility to ensure that patients who are at the end of life receive the appropriate care. This bill will reduce negligence and fraud that targets the terminally ill and their families.

2) **Background on hospice.** At the center of hospice care is the belief that individuals have the right to die pain-free and with dignity, and that families will receive necessary support. Hospice care is available to patients who no longer wish treatment directed at curing their disease. Patients are usually referred to hospice by their personal physician, although they can be referred by their families or even by themselves. Initially, a physician certifies that the patient has a life expectancy of six months or less if the disease follows its normal course. Hospice usually begins within 48 hours after a referral, and can begin sooner based on the circumstances. A hospice nurse evaluates what the person and family needs and develops a plan of care. The plan addresses the entire family’s needs: medical; emotional; psychological; spiritual; and, support services. The nurse then coordinates the care with a physician and the full team of health professionals.
3) **U.S. Department of Health and Human Services Office of Inspector General (OIG) report.** In July 2018, the OIG published a report entitled, “Vulnerabilities in the Medicare Hospice Program Affect Quality Care and Program Integrity: An OIG Portfolio.” According to the OIG report, use of hospice care has grown steadily over the past decade, with Medicare paying $16.7 billion for this care in 2016. It is an increasingly important benefit for the Medicare population; 1.4 million beneficiaries received hospice care in 2016. However, OIG has identified vulnerabilities in the program. OIG found that hospices do not always provide needed services to beneficiaries and sometimes provide poor quality care. In some cases, hospices were not able to manage effectively symptoms or medications, leaving beneficiaries in unnecessary pain for many days. OIG also found that beneficiaries and their families and caregivers do not receive crucial information to make informed decisions about their care. Further, hospices’ inappropriate billing costs Medicare hundreds of millions of dollars. This includes billing for an expensive level of care when the beneficiary does not need it. Also, a number of fraud schemes in hospice care negatively affect beneficiaries and the program. Some fraud schemes involve enrolling beneficiaries who are not eligible for hospice care, while other schemes involve billing for services never provided. Lastly, the current payment system creates incentives for hospices to minimize their services and seek beneficiaries who have uncomplicated needs. Within each level of care, a hospice is paid for every day a beneficiary is in its care, regardless of the quantity or quality of services provided on that day. While CMS has made some changes to payments, the underlying structure of the payment system remains unchanged.

4) **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 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 in California. In Los Angeles County, 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. A number of examples of fraudulent actions by hospice providers were detailed in the articles, such as:

- At a hospice in Van Nuys, state officials sampled five patients’ records in December 2016 and discovered no evidence that any were terminally ill (as required to be enrolled in hospice), and that the agency was “claiming or attempting to claim reimbursement for patients who did not need hospice care and services.”

- A hospice agency that “took over the lobby every Wednesday” at a retirement village, trailing residents back to their units to pitch them on “free” hospice care, hospital beds and motorized scooters. This hospice agency accumulated 115 regulatory violations from 2014 to 2016, ranging from mishandled medications, neglected sores, and repeated missed visits by nurses and home health aides. In 2016, this hospice was paid $450,000 for 29 patients, nearly two-thirds of whom were discharged alive. This hospice’s 62% live discharge rate that year was nearly six times the national rate.
• An example of a 67-year-old man who fell off his bicycle and spent a couple of hours in a Riverside County emergency room before walking out under his own power. Ten days later, a small Covina hospice provider diagnosed him as terminally ill and enrolled him in hospice care, saying he was weak and wasting away. Five years later, he is still alive, and testified in federal court that no one from the hospice had ever given him a medical exam before claiming he was dying.

5) Related legislation. SB 664 (Allen) imposes a moratorium on new hospice licenses until one year from the date that the California State Auditor publishes a report on hospice licensure. SB 644 has been referred to the Assembly Health Committee.

6) Prior legislation. SB 1495 (Committee on Health, Chapter 424, Statutes of 2018) requires CDPH to issue a license to a hospice that is accredited as a hospice by an accreditation organization approved by CMS. Permits CDPH to conduct a survey of an accredited hospice to ensure accreditation requirements are met, to be conducted using a selective sample basis. Requires CDPH to retain its full range of authority over accredited hospices to ensure the licensure and accreditation requirements are met.

SB 294 (Hernandez, Chapter 515, Statutes of 2017) permits a hospice agency to provide any interdisciplinary hospice services described in the Hospice Licensure Act of 1990, including but not limited to, palliative care, to a patient with a serious illness as determined by the physician and surgeon in charge of the care of the patient.

7) Support. The California Hospice and Palliative Care Association writes that this bill will close a loophole by prohibiting a hospice program, its employee, or any agent for that program to provide payment in any form for the referral of a patient to their program, and this is an important component to eliminate financial interest to influence the care or treatment of the terminally ill patient. This bill will more clearly delineate between appropriate marketing and directly influencing a patient or family’s choice about their medical care, and, provides recourse through licensure in the event of deficient activities related to hospice enrollment. The National Association of Social Workers, California Chapter writes, 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.

SUPPORT AND OPPOSITION:

Support: California Health Coalition Advocacy
California Hospice and Palliative Care Association
National Association of Social Workers, California Chapter

Oppose: None received

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