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## SENATE COMMITTEE ON HEALTH

Senator Dr. Richard Pan, Chair

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**BILL NO:** SB 1207  
**AUTHOR:** Jackson  
**VERSION:** February 20, 2020  
**HEARING DATE:** May 13, 2020  
**CONSULTANT:** Vincent D. Marchand

**SUBJECT:** Skilled nursing facilities: backup power system

**SUMMARY:** Requires skilled nursing facilities to have backup power systems that maintain a safe temperature and provide power to all critical systems for resident health and safety for no less than 96 hours.

**Existing law:**

- 1) Licenses and regulates long term care (LTC) facilities by DPH. LTC facilities include skilled nursing facilities (SNFs), intermediate care facilities (ICFs), ICF/developmentally disabled (ICF/DD), ICF/DD-habilitative, ICF/DD-nursing, and congregate living health facilities. [HSC §1250, et seq., and §1418]
- 2) Defines a “SNF” as a health facility that provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. [HSC §1250(c)]
- 3) Requires DPH, in addition to any inspections conducted pursuant to complaints, to conduct inspections annually for LTC facilities that have specified violations within the past 12 months. LTC facilities with no violations within the past 12 months are required to be inspected at least once every two years. [HSC §1422(b)]
- 4) Requires inspections and investigation of LTC facilities that are certified by the Centers for Medicare and Medicaid Services (CMS) to determine compliance with federal standards and California statutes and regulations to the extent that California statutes and regulations provide greater protection to residents, or are more precise than federal standards. [HSC §1422(b)]

**Existing California regulations:** Requires a SNF to provide and maintain an emergency electrical system in safe operating condition, which is required to serve all lighting, signals, alarms, and equipment required to permit continued operation of all necessary functions of the facility for a minimum of six hours. [22 CCR §72641]

**This bill:**

- 1) Requires a SNF to have a backup power system that maintains a safe temperature within the facility and power to all critical systems for resident health and safety for no less than 96 hours during any type of power outage.
- 2) Requires a backup power system to be installed, tested, and maintained in compliance with all applicable federal, state, and local requirements.

- 3) Requires a backup power system to have the ability to be refueled after 96 hours if a power outage is still in effect to maintain a safe temperature within the facility and power to all critical systems for resident health and safety.
- 4) Defines “critical systems,” for purposes of this bill, as including, but not limited to, all of the following:
  - a) Lighting;
  - b) Air conditioning, heating, and ventilation;
  - c) Oxygen, life-support systems, and electric-powered medical devices or equipment that are critical to resident health or safety;
  - d) Elevators;
  - e) Refrigeration systems for food and medicine;
  - f) Electronic medical records;
  - g) Fire detection, alarm, and extinguishing systems; and,
  - h) Sewage and waste disposal.
- 5) Defines “safe temperature,” for purposes of this bill, as no more than 85 degrees Fahrenheit and no less than 65 degrees Fahrenheit.

**FISCAL EFFECT:** This bill has not been analyzed by a fiscal committee.

**COMMENTS:**

- 1) *Author’s statement.* According to the author, this bill is needed to help save the lives of nursing home residents during power outages that may result from public safety power shutoffs (PSPS), emergencies, natural disasters and other causes. California’s nursing home residents have always faced serious risks from disaster-related emergencies. Today, however, the dangers they face have magnified exponentially due to massive blackouts triggered by PG&E and other utility companies to prevent wildfires during periods of extreme weather. In 2019, dozens of California nursing homes lost power – sometimes for days – due to public safety power shutoffs. Public officials are warning that the dangerous blackouts are likely to continue for a decade or more. Nursing homes without power are a grave threat to their residents. Most residents are extraordinarily vulnerable, many are completely dependent on their caregivers due to poor health and some rely on electrical-powered life support systems to stay alive. Unsafe temperatures, unrefrigerated medications, and medical devices without power can have deadly consequences for facility residents. Yet California law is silent on backup power requirements for nursing homes, the state’s regulations are weak and outdated, and key federal requirements have been rolled-back. This bill will set meaningful standards on backup power to help keep residents safe.
- 2) *PSPS.* After two consecutive years of multiple catastrophic wildfires, at least some of which caused by electric utility infrastructure, in the fall of 2019 broad swaths of California experienced widespread intentional power outages. Electric utilities proactively “de-energized” millions of customers, sometimes for long periods of time, to reduce the risk of igniting wildfires during periods with projected high winds. The Senate Energy, Utilities and Communications Committee held an oversight hearing in November of 2019, entitled “Electric Utility Power Shutoffs: Identifying Lessons Learned and Actions to Protect Californians.” According to the background paper prepared for this hearing, the duration and frequency of PSPS events varied, but in many cases the power was out for multiple days, and in some cases over a week at a time. The power shutoffs resulted in numerous school

closures, loss of phone and internet service for many, and challenges for medical providers in all settings. According to a September 2019 article in California Healthline, nursing home operators were concerned about their ability to keep residents cool and food at safe temperatures during a power outage. The article quoted the disaster preparedness manager for the California Association of Health Facilities as saying that SNFS are required to maintain generators for critical medical needs, but some homes do not have air conditioning or refrigerators connected to backup power. The article stated that in the event of a shutoff, nursing homes have to weigh the risks of staying put versus evacuating their residents, some of whom may be cognitively impaired.

- 3) *Federal standards for emergency power.* In order to participate in the Medicare or Medicaid programs, facilities are required to be certified by CMS as meeting all federal requirements. DPH is the designated agency in California to provide CMS certification of health care facilities. There are two federal standards that relate to the requirement that LTC facilities, including SNFs, have backup power for emergencies. The primary federal regulation for how facilities are required to prepare for emergency is contained in 42 CFR §483.73 on emergency preparedness. In addition to this, there are also federal regulations on how facilities are to be constructed and maintained, contained in 42 CFR §483.90 relating to the physical environment of facilities.

Under the “emergency preparedness” regulations of §483.73, LTC facilities are required to develop and implement emergency preparedness policies and procedures based on a risk assessment and emergency plan. At a minimum, these policies and procedures must address the provision of subsistence needs for staff and residents, whether they evacuate or shelter in place, including food, water, medical and pharmaceutical supplies, and alternative sources of energy to maintain the following: a) temperatures to protect resident health and safety and for the safe and sanitary storage of provisions; b) emergency lighting; c) fire detection, extinguishing, and alarm systems; and, d) sewage and waste disposal. In addition, the policies and procedures must include plans for the safe evacuation from the LTC facility, and a means to shelter in place for residence, staff, and volunteers who remain in the facility. The regulation goes on to require that LTC facilities “must implement emergency and standby power systems based on the emergency plan” they are required to develop. With regard to fuel, the regulation states “LTC facilities that maintain an onsite fuel source to power emergency generators must have a plan for how it will keep emergency power systems operational during the emergency, unless it evacuates.”

Under the “physical environment” regulations of §483.90, LTC facilities are required to be designed, constructed, equipped, and maintained to protect the health and safety of residents, personnel, and the public, and as part of this requirement, facilities are required to meet specified applicable provisions of the Life Safety Code of the National Fire Protection Association (NFPA). Various NFPA life safety standards are cross referenced in this regulation, and among them is a requirement for “facilities considering seismic events to maintain a minimum 96 hour fuel supply,” and that where the probability of interruption of off-site sources is high, to maintain onsite storage of an alternative fuel source. This regulation also specifies that an emergency power system must supply power “adequate at least for lighting all entrances and exits; equipment to maintain the fire detection, alarm, and extinguishing systems; and life support systems in the event the normal electrical supply is interrupted.

However, CMS also publishes guidance documents for these regulations to guide surveyors who are inspecting for compliance. In the guidance document for the emergency power systems of LTC facilities, the guidance points out that the relevant NFPA standard contains emergency power requirements for emergency lighting, fire detection and extinguishing systems, and alarms, but do not require heating in general patient rooms during the disruption of normal power. Therefore, the guidance states that “facilities should include consideration for design to accommodate any additional electrical loads the facility determines to be necessary to meet all substance needs required by emergency preparedness plans, policies and procedures, unless the facility’s emergency plans, policies and procedures...determine that the facility will relocate patients internally or evacuate in the event of an emergency.”

- 4) *Inspector General Report.* In November of 2019, the Office of Inspector General (OIG) of the United States Health and Human Services Agency issued a report entitled: *California Should Improve Its Oversight of Selected Nursing Homes’ Compliance With Federal Requirements for Life Safety and Emergency Preparedness.* According to this report, in June of 2018 there were 1,202 SNFs in California that were certified by CMS. The OIG selected a nonstatistical sample of 20 of these nursing homes based on various factors, including the number of high-risk deficiencies that the DPH report to CMS, and the potential risk of environmental threats such as wildfire, earthquake, and extreme heat. The OIG conducted unannounced site visits at the 20 SNFs during the fall of 2018, checking for life safety violations and reviewing the facilities’ emergency preparedness. The OIG found that DPH did not ensure that the nursing homes complied with CMS requirements for life safety and emergency preparedness, and found 137 instances of noncompliance with life safety requirements related to building exits, smoke barriers, and smoke partitions; fire detection and suppression systems, hazardous storage areas; smoking policies and fire drills; and electrical equipment testing and maintenance. The OIG additionally found 188 instances of noncompliance with emergency preparedness requirements related to written emergency plans; emergency power; plans for evacuation, sheltering in place, and tracking residents and staff during and after an emergency; emergency communications plans; and emergency plan training and testing. According to the OIG, the identified deficiencies occurred because nursing homes lacked adequate management oversight and had high staff turnover. In addition, DPH did not adequately follow up on deficiencies previously cited, or ensure that surveyors were consistently enforcing CMS requirements.

With regard to emergency power, the OIG report pointed out that nursing homes located in certain seismic zones must maintain a 96-hour fuel supply. Of the nursing homes visited, nine had one or more deficiencies related to emergency power, including eight that had not properly inspected, tested, and maintained their generators. Two nursing homes located in certain seismic zones did not have sufficient generator fuel on hand to last 96 hours. With regard to emergency plans, 12 nursing homes had one or more deficiencies related to their emergency plans for evacuations, sheltering in place, or tracking residents and staff during and after emergencies.

- 5) *Prior legislation.* AB 506 (Kalra) revises the criteria under which the DPH issues civil penalties against long term care facilities (LTC facilities) that were found to have caused the death of a resident, so that instead of having to prove the death of a resident was the “direct proximate cause” of a violation by the facility, DPH would have to prove that the violation was a “substantial factor” in the death of a resident and that the death was a foreseeable result of the violation. Additionally, increases the amount of civil penalties assessed against LTC

facilities. *AB 506 was vetoed by the Governor, who stated that “I am concerned that the language, in its current form, would create more confusion than clarity and would not help DPH to enforce the law. I encourage the Legislature and stakeholders to work with DPH toward a resolution that enables the Department to better hold facilities accountable for causing the death of a patient or resident.”*

AB 1695 (Carrillo, Chapter 832, Statutes of 2019) requires a prospective licensee or manager of a SNF to file a notice of intent with the Department of Public Health (DPH) 90 days prior to a transfer of management or a change of ownership, and requires DPH, within 90 days of receipt of this notice of intent, to determine whether the prospective transferee or prospective licensee is suitable for licensure or not. Prohibits DPH from approving a transfer of ownership, or from approving an application to operate or manage a facility, unless the prospective transferee or licensee has been determined suitable. Requires, in the event of a sale or transfer of operation or management, all employees to be retained for a 60-day transition employment period.

- 6) *Support.* This bill is co-sponsored by California Advocates for Nursing Home Reform and the Long Term Care Ombudsman Services of San Luis Obispo County. The co-sponsors state that in October 2019, more than 100 SNFs lost power, sometimes for days, during PG&E’s badly mismanaged blackouts that were aimed at preventing destructive wildfires. Public officials are warning that the dangerous power shutoffs may continue for a decade or more. According to the co-sponsors, nursing homes without power are a grave threat to their residents, and that unsafe temperatures, unrefrigerated medications, and medical devices without power can have deadly consequences for facility residents. The co-sponsors state that in March 2019, DPH stopped surveying SNFs for a federal 96-hour fuel supply standard that is tied to NFPA requirements, claiming the federal standard had been repealed by CMS. However, CMS is reporting that the standard is still in place and has not been modified. According to the co-sponsors, this bill would codify and clarify the federal 96-hour standard on backup power fuel supply, and in doing so, it will ensure that the standard is well known and enforceable, regardless of any changes in federal regulations.

Disability Rights California states in support that nursing home residents are in harm’s way from the frightening PSPS events that are aimed at preventing wildfires. It is critical that nursing homes be prepared for these new threats and have the capacity to keep all residents safe. The California Solar Storage Association states in support that with multiple extended power shutoffs expected every year for the foreseeable future, SNFs must be prepared, and that facilities lacking at least 96 hours of backup capability would put their residents at risk.

- 7) *Opposition.* The California Association of Health Facilities (CAHF) is opposed to this bill unless amended. CAHF states they are heavily reliant on government funding, with 67% of patients statewide on Medi-Cal, and much higher in some facilities. CAHF states that most SNFs were built in the 1960s and 1970s, and because Medi-Cal does not pay for facility improvements, CAHF argues that while owners and administrators do their best to upgrade them and keep them as nice as possible, this bill imposes significant costs that facilities will be unable to afford. According to CAHF, current federal guidance requires SNFs to have 96 hours of fuel for generators or facilities may evacuate. Therefore, CAHF requests that this bill be amended to mirror this ability to evacuate as an alternative to purchasing and accommodating a larger generator and 96 hours of fuel storage. CAHF is also opposed to the requirement in this bill that heating, ventilation, and air conditioning (HVAC) systems be connected to backup generators. CAHF states that current requirements only require backup

power for fire detection, alarm and extinguishing systems, and medical equipment and refrigeration systems for medicine. The inclusion of HVAC will result in nearly all of the 1,000-plus SNFs in the state needing to purchase and install new HVAC systems, which would be very expensive and take years to complete with the permitting process through the Office of Statewide Health Planning and Development. Finally, CAHF states that as written, this bill would require most SNFs to purchase and install new generators and/or HVAC systems. CAHF estimates the cost of new generators at \$500,000, and a similar cost for new HVAC systems, and argues these facilities simply do not have the necessary funds to afford these new requirements. CAHF suggests that either this bill should be narrowed to minimize costs, or this bill should identify a funding source to pay for these upgrades, and notes that a minimum of five years will be needed for new generators and/or HVAC systems to be installed at all facilities around the state.

LeadingAge California is also opposed unless amended, and makes similar arguments, requesting that the bill be amended to continue to allow SNFs to evacuate, or include a state resource to pay for the excess cost of backup generators of this caliber.

- 8) *DPH comments on federal emergency power requirements.* The author and sponsor correctly point out that DPH has not been enforcing a 96-hour fuel standard for emergency power generators, and DPH has indicated recently that it has had this issue clarified by CMS and intends to begin enforcing the 96 hour fuel requirement. However, exactly what electrical systems and components that these backup generators are required to be connected to is less clear. Much of the dispute centers on whether HVAC systems are required to be powered by emergency generators. The author and proponents point to 42 CFR §483.73, and its emergency preparedness requirement that facilities have “alternative sources of energy to maintain...temperatures to protect resident health and safety and for the safe and sanitary storage of provisions.” The nursing home industry, on the other hand, points to federal CMS guidance on this same regulation that states, in part, that “facilities must be able to provide for adequate subsistence for all patients and staff for the duration of an emergency or until all its patients have been evacuated and its operations cease.” Other guidance also seem to indicate that HVAC is not required to be connected to backup generators at SNFs.

To address these questions, Health Committee Staff reached out to DPH on their current understanding of the federal requirements that they will be enforcing with regard to alternative power and emergency preparedness. First, DPH affirmed that all SNFs are required to provide 96 hours of alternative power in the event of a power outage. According to DPH, under current NFPA codes, the generator would provide emergency power to the egress lighting, fire alarm and sprinkler systems, and electrical outlets that are designated as “red” emergency power outlets. Responding to a question about whether facilities are required to maintain safe temperatures in the facility for residents, and for food and drugs, DPH stated that facilities initially certified after October 1, 1990 must maintain a temperature range of 71 to 81 degrees Fahrenheit even during the use of an emergency generator. Additionally, DPH pointed to regulations which require the facility’s emergency preparedness plan to address the needs of patients, which include alternate sources of energy to maintain temperatures to protect resident health and safety and for the safe and sanitary storage of provisions. DPH further stated that an evacuation plan is not an acceptable alternative to providing alternative sources of power to maintain safe temperatures.

9) *Amendments.* Due to the complexity of federal requirements with regard to alternative power for emergency events, committee staff worked with the author on amendments that would remove some of the specific detail on what exactly a generator would have to be connected to, but still make it clear that all facilities must have the ability to provide an alternative source of power for 96 hours, and this includes the ability to maintain a safe temperature for residents and staff during this 96 hour period, both of which are consistent with federal regulations.

(a) The Legislature finds and declares that it is the public policy of this state to ensure the health and safety of highly vulnerable persons residing in skilled nursing facilities during power outages that may result from a public safety power shutoff, an emergency, a natural disaster, or other cause.

(b) A skilled nursing facility shall have *an alternative source of power to protect resident health and safety* ~~a backup power system that maintains a safe temperature within the skilled nursing facility and power to all critical systems for resident health and safety~~ for no less than 96 hours during any type of power outage *that complies with federal requirements for long term care facilities, including but not limited to Sections 483.73 and 483.90 of Title 42 of the Code of Federal Regulations. These requirements include maintaining a safe temperature for residents and staff.*  
(remainder of bill is deleted)

**SUPPORT AND OPPOSITION:**

**Support:** California Advocates for Nursing Home Reform (co-sponsor)  
Long Term Care Ombudsman Services of San Luis Obispo County (co-sponsor)  
California Solar and Storage Association  
Consumer Federation of California  
Disability Rights California

**Oppose:** California Association of Health Facilities (unless amended)  
LeadingAge of California (unless amended)

-- END --