

Date of Hearing: August 18, 2020

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

SB 1207 (Jackson) – As Amended August 6, 2020

Policy Committee: Health Vote: 12 - 0

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill requires a skilled nursing facility (SNF) to have an alternative source of power to protect resident health and safety for no less than 96 hours during any type of power outage. It also:

- 1) Requires alternative sources of power comply with specified federal requirements, including maintaining a safe temperature for residents and staff.
- 2) Requires facilities to maintain sufficient fuel onsite to maintain generator operation for no less than 96 hours or make arrangements for fuel delivery for an emergency event, as specified.

FISCAL EFFECT:

- 1) Minor costs to the California Department of Public Health (CDPH) to develop new survey tools and train staff on these requirements (Licensing and Certification Fund).
- 2) If this bill is found to exceed federal requirements, there is a potential the state will incur significant costs to increase the rates the Medi-Cal program pays for skilled nursing facility services. The Department of Health Care Services, through the Medi-Cal program, reimburses SNFs for the cost of meeting state and federal mandates, such as those related to current federal emergency preparedness requirements. If it is determined that the additional requirements proposed in this bill are already federally required, there will be little to no fiscal impact.

COMMENTS:

- 1) **Purpose.** According to the author, this bill is needed to help save the lives of SNF residents during power outages that may result from public safety power shutoffs, emergencies, natural disasters and other causes. The author notes most residents are medically vulnerable and some rely on electrical-powered life support systems to stay alive. The author contends California law is silent on backup power requirements for SNFs, the state's regulations are weak and outdated and key federal requirements are misunderstood and not enforced by DPH.
- 2) **Background.** California SNFs must be certified by CDPH to participate in Medi-Cal and Medicare. Certification requires SNFs to meet a number of federal regulations, including those related to emergency power. Specifically, federal regulations require the facility to have a plan to keep emergency power systems operational during an emergency. Federal regulations also reference standards found in the Life Safety Code of the National Fire

Protection Association (NFPA), which requires facilities considering seismic events to maintain a minimum 96-hour fuel supply and requires facilities to maintain onsite storage of an alternative fuel source where the probability of interruption of off-site sources is high. In 2019, investigators from the federal Office of Inspector General of the United States Health and Human Services Agency surveyed 20 facilities. The report of their findings describes numerous deficiencies with respect to emergency power, including two facilities in seismic zones where less than a 96-hour fuel supply was identified. According to CDPH, more clarity is needed as to which federal guidelines should be enforced. Accordingly, without further clarity from the federal Centers for Medicare and Medicaid Services (CMS), it is unclear whether this bill exceeds federal requirements. If it does, fuel and storage costs, as well as increased costs for heating, ventilation and air conditioning (HVAC) systems may result in significant mandatory reimbursement increases for SNF services provided through Medi-Cal.

- 3) **Support.** This bill is co-sponsored by California Advocates for Nursing Home Reform (CANHR) and the Long Term Care Ombudsman Services of San Luis Obispo County. CAHNR notes that the state regulation on backup power only requires SNFs to have backup power available for six hours for exceedingly limited functions, and it does not require SNFs to maintain safe temperatures during power outages. CAHNR contends that in March 2019, DPH stopped surveying SNFs for the federal 96-hour fuel supply standard tied to NFPA requirements, claiming the federal standard had been repealed by CMS.
- 4) **Opposition and Concern.** The California Association of Health Facilities (CAHF) and LeadingAge California (LA) are opposed to this bill unless it is amended to direct CDPH to determine the flexibilities allowed to achieve 96 hours of backup power and to maintain a safe temperature, and to determine the timeline required for SNFs to install new equipment. The California Hospital Association is not opposed but writes with concern, requesting CDPH provide additional information about the bill's requirement to maintain a "safe temperature" and how it will be interpreted and enforced.

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