
VETO

Bill No: SB 1207
Author: Jackson (D)
Amended: 8/25/20
Vote: 27

SENATE HEALTH COMMITTEE: 8-0, 5/13/20

AYES: Pan, Lena Gonzalez, Grove, Hurtado, Leyva, Mitchell, Monning, Rubio
NO VOTE RECORDED: Nielsen

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 36-0, 6/22/20

AYES: Allen, Archuleta, Atkins, Bates, Beall, Borgeas, Bradford, Caballero,
Chang, Dahle, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Grove,
Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Mitchell, Monning,
Morrell, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski,
Wiener, Wilk

NO VOTE RECORDED: Jones, Melendez, Moorlach, Nielsen

SENATE FLOOR: 37-1, 8/31/20

AYES: Allen, Archuleta, Atkins, Bates, Beall, Borgeas, Bradford, Caballero,
Chang, Dahle, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Grove,
Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Mitchell, Monning,
Moorlach, Morrell, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg,
Wieckowski, Wiener, Wilk

NOES: Nielsen

NO VOTE RECORDED: Jones, Melendez

ASSEMBLY FLOOR: 63-0, 8/30/20 - See last page for vote

SUBJECT: Skilled nursing facilities: backup power system

SOURCE: California Advocates for Nursing Home Reform
Long Term Care Ombudsman Services of San Luis Obispo County

DIGEST: This bill requires skilled nursing facilities 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 that complies with specified federal requirements.

ANALYSIS:

Existing law:

- 1) Licenses and regulates long term care (LTC) facilities by the Department of Public Health (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 an “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)]
- 5) Requires an 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 an 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.

- 2) Requires alternative sources of power to comply with applicable 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.
- 3) Specifies that the federal requirements listed in 2) above include maintaining a safe temperature for residents and staff.
- 4) Requires facilities that use a generator, consistent with federal standards, 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. Require a facility, if fuel is to be delivered during an emergency event, to ensure that fuel will be available with no delays.

Comments

- 1) *Author's statement.* According to the author, this bill is necessary 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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Assembly Appropriations Committee, minor costs to DPH to develop new survey tools and train staff on these requirements (Licensing and Certification Fund).

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.

SUPPORT: (Verified 10/3/20)

California Advocates for Nursing Home Reform (co-source)
Long Term Care Ombudsman Services of San Luis Obispo County (co-source)
AARP
Association of Regional Center Agencies
California Alliance for Retired Americans
California Commission on Aging
California Long-term Care Ombudsman Association
California Office of the State Long-term Care Ombudsman
California Professional Firefighters
California Solar & Storage Association
Capstone Turbine Corporation
Consumer Attorneys of California
Consumer Federation of California
County of Santa Barbara
Disability Rights California
National Association of Social Workers, California Chapter

OPPOSITION: (Verified 10/3/20)

Association of California Healthcare Districts
California Association of Health Facilities
LeadingAge California

ARGUMENTS IN 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.

ARGUMENTS IN OPPOSITION: The California Association of Health Facilities (CAHF) and LeadingAge California are opposed to this bill unless amended. Opponents state that if HVAC systems must be connected to back up generators, then nearly all 1,200 SNFs in the state will need to purchase, install and have new HVAC systems approved and inspected by the Office of Statewide Health Planning and Development. Opponents also argue that the current effective date of the bill, January 1, 2021, is an unreasonable and unrealistic timeline for SNFs to comply with the requirement to "maintain a safe temperature". While SB 1207 seeks to codify federal requirements for SNFs, federal guidelines allow for facilities to evacuate if they are unable to maintain a safe temperature. As such, many facilities have not upgraded their HVACs which is a large cost. Opponents state that a year or more is needed for facilities to comply with this portion of the bill as there is a significant amount of time that is needed to work with OSHPD to purchase, install and inspect equipment. Facilities want to comply but three months is not long enough and facilities will potentially face citations and penalties for failing to meet this unrealistic timeline.

GOVERNOR'S VETO MESSAGE:

I am returning Senate Bill 1207 without my signature.

SB 1207 would require Skilled Nursing Facilities to have an alternative source of power for no less than 96 hours during any type of power outage.

Skilled Nursing Facilities are a central part of our system of care for vulnerable individuals. As such, it is important that they have sufficient emergency backup power in the event of a power interruption. However, this bill relies on an unclear federal standard as justification. Moreover, the timeline for implementing this bill is unfeasible given the need for

significant renovations that facilities would need to complete to comply with this bill.

I am directing the California Department of Public Health and the Office of Statewide Health Planning and Development to convene a stakeholder group to ensure that relevant experts can fully assess alternatives and develop recommendations to appropriately address resident and staff safety in the event of a power shut-off by April 1, 2021. This approach will identify recommendations regarding an emergency power standard that protects patients and allows facilities to make necessary upgrades in a timely manner.

ASSEMBLY FLOOR: 63-0, 8/30/20

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Chu, Cooley, Cooper, Cunningham, Daly, Diep, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Lackey, Levine, Limón, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Waldron, Weber, Wood, Rendon

NO VOTE RECORDED: Bigelow, Brough, Chen, Choi, Megan Dahle, Eggman, Flora, Fong, Frazier, Gallagher, Gray, Kiley, Obernolte, Patterson, Voepel, Wicks

Prepared by: Vincent D. Marchand / HEALTH / (916) 651-4111
10/14/20 11:24:15

**** END ****