

Date of Hearing: April 27, 2021

ASSEMBLY COMMITTEE ON HEALTH  
Jim Wood, Chair  
AB 1280 (Irwin) – As Amended April 15, 2021

**SUBJECT:** California Hospice Licensure Act of 1990.

**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. Specifically, **this bill:**

- 1) Prohibits a hospice provider, employed hospice staff, or an agent for a 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) Prohibits 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 from being completed by anyone other than a registered nurse, license vocational nurse, medical social worker, chaplain, or counselor employed by the hospice.
- 4) Defines the following terms:
  - a) "Payment" means anything of value, including cash, gift cards, prepaid cards, or remuneration of any kind; and,
  - b) "Referral source" means 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.
- 5) Requires a hospice to provide a patient or the patient's representative, during the initial visit, in advance of furnishing care, with verbal and written notice of the patient's rights and responsibilities in a language and manner that the patient understands. Defines "verbal", for purposes of this bill to mean spoken.

**EXISTING LAW:**

- 1) Establishes the Hospice Licensure Act of 1990 (Act) which provides the Department of Public Health (DPH) with the authority to license and regulate hospice agencies.
- 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.

- 3) Requires hospice agencies to provide the following basic services:
  - 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.
- 5) Requires DPH 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 DPH to conduct a survey of an accredited hospice to ensure accreditation requirements are met, to be conducted using a selective sample basis. Requires DPH to retain its full range of authority over accredited hospices to ensure the licensure and accreditation requirements are met.

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

**COMMENTS:**

- 1) **PURPOSE OF THIS BILL.** 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.
- 2) **BACKGROUND.** 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.
  - a) **2018 Office of the Inspector General (OIG report).** According to the US 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 documents 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.

- b) ***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.

- 3) **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 664 is pending a hearing in the Senate Health Committee.

4) **PREVIOUS LEGISLATION.**

- a) SB 1495 (Committee on Health), Chapter 424, Statutes of 2018, requires DPH to issue a license to a hospice that is accredited as a hospice by an accreditation organization approved by CMS. Permits DPH to conduct a survey of an accredited hospice to ensure accreditation requirements are met, to be conducted using a selective sample basis. Requires DPH to retain its full range of authority over accredited hospices to ensure the licensure and accreditation requirements are met.
- b) SB 294 (Hernandez), Chapter 515, Statutes of 2017, permits a hospice agency to provide any interdisciplinary hospice services described in the Act, 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.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Health Coalition Advocacy

**Opposition**

None on file.

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