

Date of Hearing: April 19, 2022

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
AB 2511 (Irwin) – As Amended April 7, 2022

SUBJECT: Skilled nursing facilities: backup power source.

SUMMARY: Requires skilled nursing facilities (SNFs) to have an alternative source of power to protect resident health and safety for no fewer than 96 hours during any type of power outage. Specifically, **this bill:**

- 1) Requires a SNF to have an alternative source of power to protect resident health and safety for no fewer than 96 hours during any type of power outage.
- 2) Defines “alternative source of power” to mean a source of electricity that is not received through an electric utility, but is generated or stored onsite, which may include but is not limited to emergency generators using fuel, large capacity batteries, and renewable electrical generation facilities.
- 3) Defines, for purposes of this bill, “resident health and safety” to include, but not be limited to, maintaining a safe temperature for residents, maintaining availability of life-saving equipment, and maintaining availability of oxygen generating devices.
- 4) Requires facilities that use a generator as their alternative source of power 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. Requires, if fuel is to be delivered during an emergency event, the facility to ensure that fuel will be available with no delays.
- 5) Requires facilities that use batteries or a combination of batteries in tandem with a renewable electrical generation facility as their alternative source of power, to have sufficient storage or generation capacity to maintain operation for no fewer than 96 hours. Requires facilities to also make arrangements for delivery of a generator and fuel in the event power is not restored within 96 hours and the generation capacity of the renewable electrical generation facility is unable provide sufficient power to comply with state requirements for LTC facilities.
- 6) Requires SNFs to comply with the provision of this bill by January 1, 2025.
- 7) Finds and declares that it is the public policy of this state to ensure the health and safety of highly vulnerable persons residing in SNFs during power outages that may result from a public safety power shutoff, an emergency, a natural disaster, or other cause.

EXISTING LAW:

- 1) Establishes the Department of Public Health (DPH) which licenses and regulates long-term care (LTC) facilities. Includes as LTC facilities, SNFs, intermediate care facilities (ICFs), ICF/developmentally disabled (ICF/DD), ICF/DD-habilitative, ICF/DD-nursing, and congregate living health facilities.

- 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.
- 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. Requires LTC facilities with no violations within the past 12 months to be inspected at least once every two years.
- 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.
- 5) Requires a LTC facility, pursuant to state regulations, 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.
- 6) Requires a LTC facility, pursuant to federal regulations, to develop and maintain an emergency preparedness plan, updated every two years, that must meet the following standards:
 - a) Be based on and include a documented, facility-based and community-based risk assessment utilizing an all-hazards approach;
 - b) Include strategies for addressing emergency events identified by the risk assessment;
 - c) Address patient population, including, but not limited to, persons at-risk; the type of services the facility has the ability to provide in an emergency; and continuity of operations, including delegations of authority and succession plans; and,
 - d) Include a process for cooperation and collaboration with local, tribal, regional, state and federal emergency preparedness officials’ efforts to maintain an integrated response during a disaster or emergency situation.
- 7) Requires a LTC facility, pursuant to the plan described in 6) above, to implement emergency and standby power systems, and requires a LTC facility that maintains an onsite fuel source to power emergency generators to have a plan for how it will keep emergency power systems operational during the emergency, unless it evacuates.

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

COMMENTS:

- 1) **PURPOSE OF THIS BILL.** According to the author, there are over a thousand SNFs across our state that care for approximately 400,000 Californians. These residents require intensive medical services, with many residents relying on electrical-powered life support systems to live. Under current law, SNFs are only required to provide and maintain an emergency power system that may operate during a power outage for six hours. As wildfires continue to spark across our state, both emergency and planned power outages will continue to rise, threatening the lives of residents who need refrigerated medications, powered medical devices, and around the clock care to stay alive. The author states that this bill will require SNFs to have

an alternative source of power to keep vital systems online for a minimum of 96 hours during emergency and planned power outages. The author concludes that with this increased requirement, California will ensure that SNFs can withstand the vast majority of outages in order to maintain the health and safety of the hundreds of thousands of vulnerable individuals residing in these facilities.

- 2) **BACKGROUND.** According to the California Health and Human Services Open Data from February 4, 2022, there are 1,206 SNFs in California with a total of 117,338 beds.
- a) **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. 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:
- i) Temperatures to protect resident health and safety and for the safe and sanitary storage of provisions;
 - ii) Emergency lighting;
 - iii) Fire detection, extinguishing, and alarm systems; and,
 - iv) 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 also specifies 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.”
- b) **Ninety-six hours.** Federal regulations also require LTC facilities 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). NFPA life safety standards are cross referenced in 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.
- c) **Inspector General Report.** A November 2019, Office of Inspector General (OIG) of the United States Health and Human Services Agency report entitled, “California Should Improve Its Oversight of Selected Nursing Homes’ Compliance With Federal Requirements for Life Safety and Emergency Preparedness,” surveyed 20 of the then 1,202 SNFs in California that were certified by CMS as of June 2018. The OIG selected a

non-statistical sample of SNFs based on various factors, including the number of high-risk deficiencies that DPH reported to CMS, and the potential risk of environmental threats such as wildfire, earthquake, and extreme heat. In the fall of 2018 the OIG conducted unannounced site visits at the 20 SNFs, checking for life safety violations and reviewing the facilities' emergency preparedness. The OIG found that DPH did not ensure that the SNFs 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 SNFs 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 SNFs visited, nine had one or more deficiencies related to emergency power, including eight that had not properly inspected, tested, and maintained their generators. Two SNFs located in certain seismic zones did not have sufficient generator fuel on hand to last 96 hours. With regard to emergency plans, 12 SNFs had one or more deficiencies related to their emergency plans for evacuations, sheltering in place, or tracking residents and staff during and after emergencies.

- d) **Public Safety Power Shutoffs (PSPS).** After years of multiple catastrophic wildfires, at least some of which were caused by electric utility infrastructure, in the fall of 2019 much 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. 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.
- e) **Transfer trauma.** Relocation can have negative physical and psychological effects on patients in acute care and residents of LTC facilities. According to the U.S Administration on Aging, transfer trauma, as a result of a sudden and unexpected relocation, is associated with depression, increased irritability, serious illness, and elevated mortality risk for the frail elderly.
- f) **DPH stakeholder meeting.** The Governor’s veto message of SB 1207 (Jackson), which was substantially similar to this bill, he stated he was directing DPH 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. According to DPH there has been one meeting, at which stakeholders and DPH agreed to keep lines of communication open and share ideas and language. At this time, there is no follow-up meeting scheduled.

- 3) SUPPORT.** The Association of Regional Center Agencies (ARCA) supports this bill and states that people with developmental disabilities are at heightened risk during PSPS. Aside from medical needs, limited access to transportation and informal safety nets mean that for many, a power shutoff is a grave risk. This is particularly true for those who live in SNFs. Their needs make an assurance of reliable power even more critical. ARCA notes that the requirement that SNFs have backup power is in keeping with other mandates on those facilities that serve individuals with unique and significant needs, and that it is a reasonable step to address the new environment we are living in, and will protect their health and safety.

The California Senior Legislature (CSL) supports this bill and states that there is a need to attempt to avoid, if possible, the movement of patients by allowing time to plan for critical services. CSL concludes that with this bill, first responders can better prioritize the need to evacuate based on critical need.

4) RELATED LEGISLATION.

- a) AB 895 (Holden) requires a SNF or ICF to provide a prospective resident, prior to or at the time of admission, with a written notice that includes specified contact information for the local Long Term Care Ombudsman. AB 895 is pending referral in the Senate Rules Committee.
- b) AB 2079 (Wood) establishes, no later than July 1, 2023, a direct care spending, reporting, and rebate requirement for SNFs that are certified under the federal Centers for Medicare and Medicaid Services. AB 2079 is pending a hearing in the Assembly Appropriations Committee.
- c) AB 1907 (Bauer-Kahan) extends the maximum amount of time allowed between inspections of a LTC health facilities from two years to 30 months. AB 1907 is pending a hearing in the Assembly Appropriations Committee.

- 5) PREVIOUS LEGISLATION.** SB 1207 (Jackson) of 2020 would have required SNFs 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. SB 1207 was vetoed by Governor Gavin Newsom, who stated in part, “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.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Senior Legislature (sponsor)
Advisory Council for SourceWise
Association of Regional Center Agencies
California Advocates for Nursing Home Reform
California Long-term Care Ombudsman Association
Long Term Care Ombudsman Services of San Luis Obispo County

Opposition

None on file.

Analysis Prepared by: Lara Flynn / HEALTH / (916) 319-2097