

Date of Hearing: May 4, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

AB 2511 (Irwin) – As Amended April 7, 2022

Policy Committee: Health

Vote: 13 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: No

**SUMMARY:**

This bill requires, by January 1, 2024, a skilled nursing facility (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.

**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) To the extent the requirements of this bill exceed federal requirements, the state might incur significant costs to increase the rates the Medi-Cal program pays for SNF 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 the additional requirements proposed in this bill are already federally required, the requirements of this bill will result in little to no cost to the state.

**COMMENTS:**

- 1) **Purpose.** According to the author, many residents of SNFs rely on electrical-powered life support systems to live. Under current law, SNFs are required to provide and maintain an emergency power system that can operate for at least six hours. The author states that 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 and powered medical devices to stay alive. The author concludes that with the increased requirements in this bill, California SNFs can withstand the vast majority of outages in order to maintain the health and safety of the many vulnerable individuals residing in these facilities.
- 2) **Federal standards for emergency power.** In order to participate in the Medicare or Medicaid programs, facilities must be certified by the Centers for Medicare and Medicaid Services (CMS) as meeting all federal requirements. DPH is the designated agency in California to provide CMS certification of health care facilities. SNFs and other facilities are required to develop and implement emergency preparedness policies and procedures based on a risk assessment and emergency plan. Among the requirements are emergency and standby power systems. With regard to fuel, the regulation states “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.”

Federal regulations also require LTC facilities 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 include a requirement for “facilities considering seismic events to maintain a minimum 96 hour fuel supply,” and where the probability of interruption of off-site sources is high, to maintain onsite storage of an alternative fuel source.

- 3) **Inspector General Report.** In 2019, the Office of Inspector General (OIG) of the United States Health and Human Services Agency issued a report, “California Should Improve Its Oversight of Selected Nursing Homes’ Compliance With Federal Requirements for Life Safety and Emergency Preparedness.” The OIG surveyed 20 SNFs in California that were certified by CMS as of June 2018, and reported that DPH did not ensure that the SNFs complied with CMS requirements for life safety and emergency preparedness. The OIG found 188 instances of noncompliance with emergency preparedness requirements. With regard to emergency power, the OIG reported 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.
- 4) **Previous legislation.** SB 1207 (Jackson), of the 2019-20 Legislative Session, was similar to this bill. In the Governor’s veto message of SB 1207, he stated he was directing DPH and what is now the Department of Health Care Access and Information to convene, by April 1, 2021, 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.

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