
THIRD READING

Bill No: AB 2511
Author: Irwin (D)
Amended: 4/7/22 in Assembly
Vote: 21

SENATE HEALTH COMMITTEE: 9-0, 6/8/22
AYES: Pan, Melendez, Eggman, Gonzalez, Grove, Leyva, Limón, Rubio, Wiener
NO VOTE RECORDED: Hurtado, Roth

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/11/22
AYES: Portantino, Bates, Bradford, Jones, Laird, McGuire, Wieckowski

ASSEMBLY FLOOR: 65-0, 5/12/22 (Consent) - See last page for vote

SUBJECT: Skilled nursing facilities: backup power source

SOURCE: California Senior Legislature

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.

ANALYSIS:

Existing law:

- 1) Licenses and regulates long term care (LTC) facilities by the California Department of Public Health (CDPH). 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 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. [HSC §1250(c)]

- 3) Requires CDPH, 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, pursuant to existing California regulations, a 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 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” as 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 “resident health and safety” as including, but not limited to, maintaining a safe temperature for residents, maintaining availability of life-saving equipment, and maintaining availability of oxygen-generating devices.
- 4) Requires SNFs that use a generator 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 a SNF, if fuel is to be delivered during an emergency event, to ensure that fuel will be available with no delays.
- 5) Requires SNFs that use batteries or a combination of batteries in tandem with a renewable electrical generation facility to have sufficient storage or generation

capacity to maintain operation for no fewer than 96 hours. Requires SNFs 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 to provide sufficient power to comply with state requirements for LTCs.

- 6) Requires SNFs to comply with the provisions of this bill by January 1, 2024.

Comments

- 1) *Author's statement.* 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 a mere 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. 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. 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) *Public Safety Power Shutoffs (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. CDPH 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. The guidance document for the emergency power systems of LTC facilities 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 CDPH 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 CDPH 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, CDPH 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.

Related/Prior Legislation

SB 1207 (Jackson of 2020) was similar to this bill. *SB 1207 was vetoed by the Governor, who stated that it is important that SNFs have sufficient emergency backup power in the event of a power interruption. The Governor went on to state that, "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." The Governor's veto message directed CDPH and the Department of Health Care Access and Information to convene a stakeholder group to identify recommendations regarding an emergency power standard. CDPH convened two stakeholder meetings, one in November 2020 and the second in March of 2021. However, no consensus emerged from those stakeholder meetings.*

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

According to the Senate Appropriations Committee:

- The Department of Health Access and Information (HCAI) estimates the costs to review architectural, mechanical, and electrical plans for skilled nursing facilities as well as life/safety and compliance oversight for the projects would be approximately \$1.2 million ongoing, which includes staff resources (Hospital Building Fund).
- Minor costs to CA Department of Public Health.

SUPPORT: (Verified 8/11/22)

California Senior Legislature (source)

Advisory Council for Sourcewise

Association of California Cities – Orange County

Association of Regional Center Agencies

California Advocates for Nursing Home Reform

California Long Term Care Ombudsman Association

Consumer Attorneys of California

Disability Rights California

Long Term Care Ombudsman Services of San Luis Obispo County

OPPOSITION: (Verified 8/11/22)

Department of Finance

ARGUMENTS IN SUPPORT: This bill is sponsored by the California Senior Legislature, which states that given the last two years of emergency issues in California due to earthquakes, fires, etc., there is a need to avoid, if possible, the movement of patients by allowing time to plan for critical services. Additionally, first responders can better prioritize the need to evacuate based on critical need. California Advocates for Nursing Home Reform (CANHR) state in support that California's intensifying climate crisis has put nursing home residents in harm's way. According to CANHR, their lives depend on power to keep temperatures safe and to operate life sustaining equipment, while the facilities they live in are increasingly subject to prolonged blackouts caused by PSPS. CANHR states that nursing homes without power are a grave threat to their residents. Disability Rights California states in support that facilities trusted with the long term care of people with disabilities should be required to have a backup power source like a hospital does.

ARGUMENTS IN OPPOSITION: The Department of Finance states that it is opposed to this bill because the additional workload associated with this bill creates new costs for HCAI that are not included in the Administration's spending plan, and the bill could have unknown costs for the state to reimburse SNFs under the Medi-Cal program.

ASSEMBLY FLOOR: 65-0, 5/12/22

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Choi, Cooley, Cooper, Megan Dahle, Daly, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Ramos, Reyes, Luz Rivas, Robert Rivas, Salas, Santiago, Seyarto, Smith, Stone, Ting, Villapudua, Voepel, Waldron, Akilah Weber, Wicks, Wilson, Wood, Rendon

NO VOTE RECORDED: Boerner Horvath, Cunningham, Davies, Gray, Grayson, Kiley, Lackey, Lee, Quirk-Silva, Rodriguez, Blanca Rubio, Valladares, Ward

Prepared by: Vincent D. Marchand / HEALTH / (916) 651-4111
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