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HEALTH AND SAFETY CODE - HSC

DIVISION 2. LICENSING PROVISIONS [1200 - 1796.70] (*Division 2 enacted by Stats. 1939, Ch. 60.*)

CHAPTER 8.5. California Hospice Licensure Act of 1990 [1745 - 1759] (*Chapter 8.5 added by Stats. 1990, Ch. 1343, Sec. 1.*)

ARTICLE 2. Licensure [1747 - 1751.5] (*Article 2 added by Stats. 1990, Ch. 1343, Sec. 1.*)

1747. (a) No person, political subdivision of the state, or other governmental agency, that is not operating a hospice as of January 1, 1991, shall establish or operate a hospice without first obtaining a license under this chapter.

(b) Any person, political subdivision of the state, or other governmental agency, that is operating a hospice as of January 1, 1991, may continue to operate the hospice only under the following conditions:

(1) The person, political subdivision of the state, or other governmental agency shall apply to the state department for a license under this chapter within 60 days after forms for the application of licensure under this chapter are available from the state department.

(2) The person, political subdivision of the state, or other governmental agency shall cease calling or referring to itself as a hospice upon the final decision of the director upholding the state department's denial of an application for licensure under this chapter.

(c) Nothing in this chapter shall preclude the ongoing use of the title "volunteer hospice" by those organizations that satisfy all of the following:

(1) They do not provide skilled nursing services.

(2) They do not charge patients or families for hospice services, and they do not receive third-party insurance payments for services rendered.

(3) They satisfy the disclosure requirements specified in subdivision (c) of Section 1748.

(d) A small and rural hospice is exempt from the licensing provisions of this chapter and the disclosure requirements of subdivision (c) of Section 1748. A small and rural hospice may provide skilled nursing services and may use the title "volunteer hospice." For purposes of this chapter, a "small and rural hospice" means a hospice that provides services to less than 50 patients per year, does not charge for services, does not receive third-party payment for services rendered, and is not located in a standard metropolitan statistical area.

(Amended by Stats. 1997, Ch. 492, Sec. 2. Effective January 1, 1998.)

1747.1. A hospice program certified in accordance with federal Medicare hospice conditions of participation shall be exempt from subdivision (a) of Section 1747, but shall be subject to Section 1726 unless it elects to apply for hospice licensure. A hospice program that elects to apply for hospice licensure shall thereafter be subject to all the hospice licensure requirements set forth in this chapter.

(Added by Stats. 1994, Ch. 985, Sec. 1.5. Effective January 1, 1995.)

1747.3. (a) Notwithstanding any other law, beginning January 1, 2018, a licensee pursuant to this chapter may provide any interdisciplinary hospice services described in this chapter, 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, including, among other kinds of patients, a patient who continues to receive curative treatment from other licensed health care professionals.

(b) A licensee that elects to provide palliative care pursuant to this section shall provide the department with the date the licensee intends to begin providing the palliative care no less than 45 days before that date and all of the following:

(1) The completed relevant portions of a form HS 200, or a successor form, as determined by the department.

(2) A complete federal form CMS 417, or a successor form, as determined by the department.

(c) (1) The department shall not require the documents submitted pursuant to subdivision (b) to be approved prior to the licensee providing palliative care pursuant to this section.

(2) The department shall not charge an application fee to provide any care or services pursuant to this section.

(d) (1) On or before April 30, 2022, and each April thereafter until April 30, 2025, a licensee shall provide the department with information for the period of time in the prior calendar year during which the licensee provided palliative care pursuant to this section through the department's online reporting portal, including, but not limited to, all of the following:

(A) The number of nonhospice patients who received palliative care pursuant to this section.

(B) The number of patients enrolled in hospice.

(C) The primary diagnoses of the patients for which the licensee provided palliative care pursuant to this section.

(D) The numbers and types of providers hired during the previous 12 months.

(E) The numbers and types of providers who left employment during the previous 12 months.

(F) Complaints received by the licensee during the previous 12 months that related to all the following:

(i) Events that caused or were likely to cause serious injury, harm, impairment, or death.

(ii) Events or incidents that negatively impacted a patient's mental, physical, or psychosocial status and were of such consequence to the patient's well-being that a rapid response was required.

(iii) Delays in patient care for hospice and nonhospice patients who received palliative care pursuant to this section.

(iv) Qualifications of staff.

(2) A licensee that has been approved by the department to provide palliative care pursuant to this section that has either provided the department with the date the licensee intends to begin providing palliative care pursuant to this section, or has notified the department of its cessation of palliative care provision pursuant to subdivision (g), shall report to the department pursuant to paragraph (1) regardless of whether the licensee provided palliative care pursuant to this section during the prior calendar year.

(e) During the period of time a licensee provides palliative care pursuant to this section, the licensee shall simultaneously submit to the department all information the licensee provides to the Office of Statewide Health Planning and Development.

(f) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement, interpret, or make specific the provisions of this section by means of all-facility letters, or similar instructions, without taking regulatory action.

(g) If the licensee ceases to provide palliative care services pursuant to this section on or before January 1, 2027, the licensee shall submit to the department the same documents as required in subdivision (b).

(h) The provisions of this section shall not be applicable to a hospice facility established pursuant to subdivision (n) of Section 1250, or Section 1339.30 or 1339.40.

(i) This section shall not be deemed to modify the provision of hospice care required pursuant to Section 1368.2.

(j) On or before January 15, 2026, the department shall convene a stakeholder meeting to discuss the results of the information collected pursuant to this section. The department may, at its discretion, use electronic means, such as a webinar, to convene the stakeholder meeting.

(k) For purposes of this section, "serious illness" shall mean a condition that may result in death, regardless of the estimated length of the patient's remaining period of life.

(l) This section shall remain in effect only until January 1, 2027, and as of that date is repealed.

(Amended by Stats. 2021, Ch. 488, Sec. 1. (SB 353) Effective January 1, 2022. Repealed as of January 1, 2027, by its own provisions.)

1747.5. Each hospice licensed pursuant to this chapter shall maintain, and revise as needed, and implement policies regarding the purchase, storage, furnishing, and transportation of legend devices that are reviewed annually by a group of professional personnel, including a physician and surgeon, a pharmacist, and a registered nurse, and are revised as needed. As used in this section, legend

devices means any device that bears the label "Caution: federal law restricts this device to sale by or on the order of a _____," or words of similar meaning.

(Added by Stats. 1992, Ch. 1104, Sec. 6. Effective September 29, 1992.)

1748. (a) Except as otherwise provided in subdivision (b) or (d) of Section 1747, no person, political subdivision of the state, or other governmental agency shall establish, conduct, maintain, or represent itself as a hospice agency unless a license has been issued under this chapter. Multiple locations need not obtain a separate license. Multiple locations shall be listed on the license of the parent agency and each shall pay a licensing fee in the amount prescribed by subdivision (a) of Section 1750.

(b) Any person, political subdivision of the state, or other governmental agency desiring a license to establish a hospice agency shall file with the department a verified application on forms prescribed and furnished by the department that contain any information as may be required by the department for the proper administration and enforcement of this chapter.

(c) Any hospice agency that is not required to obtain a license under this chapter shall disclose in all advertisements and information provided to the public all of the following information:

(1) It is not required to be licensed and is not regulated by the department.

(2) Any complaint against the hospice agency should be directed to the local district attorney and the department.

(3) Any complaint against personnel licensed by a board or committee within the Department of Consumer Affairs and employed by the hospice agency should be directed to the respective board or committee. Any complaint against a certified home health aide or certified nurse assistant shall be directed to the department.

The address and telephone number of any state agency, board, or committee which is responsible for addressing complaints shall be provided by the hospice agency, upon request, to any patient of the hospice agency.

(d) A license shall not be transferable.

(e) The department shall not approve a change of ownership of a licensed hospice agency within five years of the date a license was initially issued to the licensee. Only the person, political subdivision of the state, or other governmental agency issued a license for the purposes of operating a hospice agency may use that license during the five-year period.

(f) Notwithstanding subdivision (e), the department may make an exception for extenuating circumstances and approve a change of ownership within the five-year period if the hospice agency demonstrates and provides evidence to the department of either of the following:

(1) The need to ensure continuity of care for existing patients of the hospice agency.

(2) Both a financial hardship and an unmet need of hospice services in the geographic area the hospice agency would serve.

(Amended by Stats. 2023, Ch. 131, Sec. 107. (AB 1754) Effective January 1, 2024.)

1749. (a) To qualify for a license under this chapter, an applicant shall satisfy all of the following:

(1) Be of good moral character. If the applicant is a franchise, franchisee, firm, association, organization, partnership, business trust, corporation, company, political subdivision of the state, or governmental agency, the person in charge of the hospice for which the application for a license is made shall be of good moral character.

(2) Demonstrate the ability of the applicant to comply with this chapter and any rules and regulations promulgated under this chapter by the department.

(3) File a completed application with the department that was prescribed and furnished pursuant to Section 1748.

(4) The information required pursuant to this section shall be provided to the Licensing and Certification Program upon initial application for licensure. Unless otherwise specified, any change in the information that requires the licensee to submit a report of change or written notification to the Licensing and Certification Program shall be provided within 10 business days of the change along with any applicable fee according to subdivision (b) of Section 1266.

(b) (1) A hospice agency shall have an administrator, administrator designee, director of patient care services, director of patient care services designee, and medical director or contracted medical director, and shall submit to the department all of the following information for each individual on an initial application:

(A) An HS 215A form or its successor form.

(B) A résumé.

(C) A list of all hospice agencies the individual is currently serving as an administrator, administrator designee, director of patient care services, director of patient care services designee, or medical director or contracted medical director.

(2) In addition to the information required pursuant to paragraph (1), a hospice agency shall submit to the department information on whether its medical director, or contracted medical director, is certified as a hospice medical director according to the requirements established by the Hospice Medical Director Certification Board, or certified in hospice and palliative medicine according to the requirements established by a member board of the American Board of Medical Specialties, or by the American Osteopathic Association, or an equivalent organization as determined by the department.

(3) A hospice agency shall notify the department of any change in the administrator, administrator designee, director of patient care services, director of patient care services designee, or medical director or contracted medical director by submitting the information described in paragraphs (1) and (2) within 10 business days of the change.

(4) All hospice agencies shall report to the department the name of the agency's administrator, administrator designee, director of patient care services, director of patient care services designee, and medical director or contracted medical director by submitting the information required by paragraphs (1) and (2), no later than March 31, 2023.

(c) (1) The department shall verify the status of professional licensure for hospice agency management personnel.

(2) The department may also verify the following:

(A) Association of hospice agency management personnel listed on the licensing application with the hospice agency.

(B) Work history of hospice agency management personnel.

(3) For purposes of this subdivision, verification may include contacting the hospice agency personnel or previous employers by telephone.

(d) In order for a person, political subdivision of the state, or other governmental agency to be licensed as a hospice agency, it shall satisfy the definition of a hospice contained in Section 1746, and also provide, or make provision for, the following basic services:

(1) Skilled nursing services.

(2) Social services/counseling services.

(3) Medical direction.

(4) Bereavement services.

(5) Volunteer services.

(6) Inpatient care arrangements.

(7) Home health aide services.

(e) The services required to be provided pursuant to subdivision (d) shall be provided in compliance with the "Standards for Quality Hospice Care, 2003," as available from the California Hospice and Palliative Care Association, until the department adopts regulations establishing alternative standards pursuant to subdivision (h).

(f) (1) Except as provided in paragraph (2), the applicant shall demonstrate and provide evidence of an unmet need of hospice services in the geographic area that a hospice agency would serve.

(2) An applicant for a hospice agency change of ownership need not comply with paragraph (1) for the previously approved service area if the license has been continually held by the previous licensee for five years and one of the following conditions are met:

(A) The hospice agency has previously qualified for licensure after demonstrating and providing evidence of unmet need of hospice services in the hospice agency's geographic area.

(B) The hospice agency can demonstrate it is meeting a need for hospice services.

(3) If the hospice agency's approved geographic service area will change upon the change in ownership, the new applicant for licensure shall demonstrate unmet need for hospice services for any new service area.

(g) (1) Notwithstanding any law to the contrary, to meet the unique needs of the community, licensed hospice agencies may provide, in addition to hospice services authorized in this chapter, any of the following preliminary services for any person in need of those

services, as determined by the physician and surgeon, if any, in charge of the care of a patient, or at the request of the patient or family:

(A) Preliminary palliative care consultations.

(B) Preliminary counseling and care planning.

(C) Preliminary grief and bereavement services.

(2) Preliminary services authorized pursuant to this subdivision may be provided concurrently with curative treatment to a person who does not have a terminal prognosis or who has not elected to receive hospice services only by licensed and certified hospices. These services shall be subject to the schedule of benefits under the Medi-Cal program, pursuant to subdivision (w) of Section 14132 of the Welfare and Institutions Code.

(h) The department may adopt regulations establishing standards for any or all of the services required to be provided under subdivision (d). The regulations of the department adopted pursuant to this subdivision shall supersede the standards referenced in subdivision (e) to the extent the regulations duplicate or replace those standards.

(Amended by Stats. 2024, Ch. 40, Sec. 14. (SB 159) Effective June 29, 2024.)

1749.5. The Legislature recognizes that hospices can apply for certification for their hospice programs from the federal Medicare program. If the department has determined during any combined licensing and certification survey that a hospice is in substantial compliance with a requirement, the department shall not be redundant by also reviewing the similar licensing or certification requirements.

(Added by Stats. 1990, Ch. 1343, Sec. 1.)

1750. (a) Each new and renewal application for a license under this chapter shall be accompanied by an annual Licensing and Certification Program fee set in accordance with Section 1266.

(b) All hospices shall maintain compliance with the licensing requirements. These requirements shall not, however, prohibit the use of alternate concepts, methods, procedures, techniques, space, equipment, personnel qualifications, or the conducting of pilot projects, necessary for program flexibility. Program flexibility shall be carried out with provision for safe and adequate patient care and with prior written approval of the state department. A written request for program flexibility and substantiating evidence supporting the request shall be submitted by the applicant or licensee to the state department. The state department shall approve or deny the request within 60 days of submission. Approval shall be in writing and shall provide for the terms and conditions under which program flexibility is approved. A denial shall be in writing and shall specify the basis therefor. If after investigation the state department determines that a hospice using program flexibility pursuant to this section is operating in a manner contrary to the terms or conditions of the approval for program flexibility, the director shall immediately revoke that approval.

(c) Each hospice shall, on or before March 15 of each year, file with the Office of Statewide Health Planning and Development (OSHDP), upon forms furnished by OSHDP, a verified report for the preceding calendar year upon all matters requested by OSHDP. This report may include, but not be limited to, data pertaining to age of patients, diagnostic categories of patients, and number of visits by service provided.

(Amended by Stats. 2006, Ch. 74, Sec. 25. Effective July 12, 2006.)

1751. (a) Upon an applicant's filing an application for licensure under this chapter and compliance with this chapter and the rules and regulations adopted by the state department under this chapter, the state department shall issue to the applicant a license to operate as a hospice. Any fees required pursuant to Section 1750 shall be paid before a license is issued. Licensure also may be denied by the state department as specified in Section 1755.

(b) Each license issued under this chapter shall expire 24 months from the date of its issuance.

(c) A biennial application for the renewal of a license, accompanied by any fee required pursuant to subdivision (b) of Section 1750, shall be filed with the state department no less than 30 days prior to the expiration date of the license. The failure to file an application for renewal within the time required by this subdivision shall result in the expiration of the license.

(Added by Stats. 1990, Ch. 1343, Sec. 1.)

1751.5. (a) Notwithstanding any other provision of this chapter, the department shall issue a license to a hospice agency that applies to the department for a hospice agency license and meets all of the following requirements:

(1) Is accredited as a hospice by an entity approved by the federal Centers for Medicare and Medicaid Services as a national accreditation organization, and the national accreditation organization forwards to the department copies of all initial and subsequent survey and other accreditation reports or findings.

(2) Files an application with fees pursuant to this chapter.

(3) Demonstrates and provides evidence to the department of an unmet need of hospice services in the geographic area the hospice agency would serve.

(4) Meets any other additional licensure requirements of, or regulations adopted if necessary pursuant to, this chapter that the department identifies, after consulting with the national accreditation organization, as more stringent than the accreditation requirements of the national accreditation organization.

(b) The department shall conduct surveys of 5 percent of initial hospice agency licenses approved by accrediting organizations during the previous calendar year to ensure the accreditation requirements are met and to determine compliance with licensing requirements that the department identifies as more stringent than the accreditation requirements. These surveys shall be conducted using a selective sample basis.

(c) The department may conduct a survey of an accredited hospice agency not surveyed under subdivision (b) to ensure the accreditation and licensing requirements are met.

(d) The department may conduct a survey of an accredited hospice agency to investigate complaints against an accredited hospice agency for substantial noncompliance, as determined by the department, with these accreditation standards or with any applicable licensing requirements.

(e) Notwithstanding subdivisions (a), (b), (c), and (d), the department shall retain its full range of authority over accredited hospice agencies to ensure the licensure and accreditation requirements are met. This authority shall include the entire scope of enforcement sanctions and options available for unaccredited hospice agencies.

(Amended by Stats. 2022, Ch. 797, Sec. 3. (AB 2673) Effective January 1, 2023.)