AB-2673 Hospice agency licensure: moratorium on new licenses. (2021-2022)

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Assembly Bill No. 2673

CHAPTER 797

An act to amend Sections 1748, 1749, 1751.5, 1751.70, 1753, and 1755 of, and to add Sections 1752.1 and 1753.1 to, the Health and Safety Code, relating to hospice agencies.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2673, Irwin. Hospice agency licensure: moratorium on new licenses.

The California Hospice Licensure Act of 1990 (act) requires a person, political subdivision of the state, or other governmental agency to obtain a license from the State Department of Public Health to provide hospice services to an individual who is experiencing the last phase of life due to a terminal disease, as defined, and their family, except as provided. The act also provides for the renewal of a license. The act imposes criminal penalties on any person who violates any provision of the act or any rule or regulation promulgated under the act.

Existing law prohibits any person, political subdivision of the state, or other governmental agency from establishing, conducting, maintaining, or representing itself as a hospice unless a license has been issued under the act.

This bill would generally replace the term “hospice” with the term “hospice agency.” The bill would provide that hospice agency licenses are not transferable. The bill would specify that only the person or entity initially issued the license may use the license for 5 years. The bill would prohibit the department from approving a change of ownership of a licensed hospice agency for 5 years from the date of initial licensure. The bill would authorize the department to make an exception to the 5-year prohibition under extenuating circumstances, as prescribed.

Existing law requires an applicant for a hospice license to satisfy certain conditions, and to satisfy the definition of a hospice and provide specified services in order to be licensed as a hospice. Existing law authorizes the department to deny an application for licensure, or suspend or revoke any license issued to provide hospice services for various reasons, including, but not limited to, violation by the applicant or licensee of the act or related rules and regulations promulgated by the department. Existing law authorizes the department to conduct a survey of an accredited hospice to ensure that the accreditation requirements are met.

This bill would revise and expand the department’s application requirements, and would additionally require an applicant who has not previously qualified for a hospice agency license to, as a condition of licensure, demonstrate and provide evidence of an unmet need of hospice services in the geographic region the hospice would serve, except under specified circumstances. The bill would require a hospice agency to have specified personnel categories and would require the hospice agency to provide certain information for each individual on an initial application for those positions. The bill would add to the reasons for denial, suspension, or revocation of a license to include, among others, improperly certifying a patient as eligible for hospice care, and demonstrating a pattern and practice of violations of state or federal standards during the last 3 years of a hospice agency owned, operated, or managed by the applicant or licensee. The bill would require the department to conduct annual surveys of

5% of initial hospice agency licenses approved by accrediting organizations during the previous calendar year to ensure that the accreditation requirements are met, using a selective sample basis, and would authorize the department to survey an accredited hospice agency not included as part of the required surveys. The bill would establish a procedure for a person to request an investigation of an accredited hospice agency by making an oral or written complaint alleging a violation of the requirements applicable to hospice agencies. The bill would require the department to make a preliminary review and to make an onsite investigation within 10 business days after receiving the complaint, except as specified. The bill would require the department to notify the complainant in writing of its determination as a result of the investigation within 10 business days of completing the investigation.

Existing law imposes a moratorium on the department issuing a new license to provide hospice services, except as specified. Existing law requires the moratorium to end on the earlier of 365 days from the date that the California State Auditor publishes a report on hospice licensure or on January 1, 2027, when the moratorium provisions are repealed.

This bill would require the department, by January 1, 2024, to adopt emergency regulations to implement the recommendations in a specified report of the California State Auditor. The bill would require the department to maintain the general moratorium on new hospice agency licenses until the department adopts the regulations. The bill would require the regulations, among other things, to establish guidelines for assessing the appropriateness of a hospice agency's ratio of patients to nurses, require hospice agency management personnel to meet minimum standards of training and experience, and to establish timelines for reporting changes to application information, as specified. The bill would require the moratorium to end on the earlier of 2 years from the date that the California State Auditor publishes a report on hospice agency licensure, or the date the emergency regulations are adopted. The bill would exempt licensed hospice facilities, as defined, from the moratorium.

Because a violation of certain of the bill's requirements would be a misdemeanor, the bill would impose a state-mandated local program.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.
Vote: majority   Appropriation: no   Fiscal Committee: yes   Local Program: yes

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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1748 of the Health and Safety Code is amended to read:

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 license 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.

SEC. 2. Section 1749 of the Health and Safety Code is amended to read:

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.

(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.

SEC. 3. Section 1751.5 of the Health and Safety Code is amended to read:

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.

SEC. 4. Section 1751.70 of the Health and Safety Code is amended to read:

1751.70. (a) Notwithstanding any other law and except as provided in Section 1751.75, on and after January 1, 2022, and until the earlier of two years from the date that the California State Auditor publishes a report on hospice licensure, or the date emergency regulations are adopted pursuant to Section 1753.1, the department shall not issue a new license to operate a hospice agency pursuant to this chapter.

(b) Hospice facilities licensed under subdivision (n) of Section 1250 are exempt from the moratorium established under subdivision (a).

SEC. 5. Section 1752.1 is added to the Health and Safety Code, to read:

1752.1. (a) Any person may request an investigation of a hospice agency in accordance with this chapter by making a complaint to the department alleging a violation of applicable requirements prescribed by statutes or regulations of this state. A complaint may be made orally or in writing.

(b) The substance of the complaint shall be provided to the licensee no earlier than at the time of the investigation. Unless the complainant specifically requests otherwise, neither the substance of the complaint provided to the licensee nor any copy of the complaint or any record published, released, or otherwise made available to the licensee shall disclose the name of any person mentioned in the complaint except the name of any duly authorized officer, employee, or agent of the department conducting the investigation or inspection pursuant to this chapter.

(c) (1) Upon receipt of a complaint, the department shall make a preliminary review and, unless the department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, it shall make an onsite investigation within 10 business days after receiving the complaint except when the visit would adversely affect the licensing investigation or the investigation of other agencies, including, but not limited to, law enforcement agencies. In either event, the complainant shall be promptly informed of the department’s proposed course of action.

(2) Prior to conducting an onsite investigation pursuant to this section, the department shall make a good faith effort, documented in writing, to contact and interview the complainant and inform the complainant of the department’s proposed course of action and the relevant deadline for the department to complete its investigation. To the extent practicable, the officer, employee, or agent of the department who will conduct the investigation shall be the representative who interviews and makes contact with the complainant.

(d) Within 10 business days of completing the investigation of a complaint and licensee under this section, the department shall notify the complainant in writing of the department’s determination as a result of the investigation.

SEC. 6. Section 1753 of the Health and Safety Code is amended to read:

1753. (a) The department shall adopt, amend, or repeal, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, reasonable rules and regulations as may be necessary or proper to carry out the purposes and intent of this chapter and to enable the department to exercise the powers and perform the duties conferred upon it by this chapter. The department shall consult with licensed hospices, small and rural hospices, and volunteer hospice providers in developing regulations pursuant to this chapter.

(b) The department shall adopt rules and regulations regarding the purchase, storage, furnishing, and transportation of legend devices for a patient of a hospice. As used in this subdivision, “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.

SEC. 7. Section 1753.1 is added to the Health and Safety Code, to read:

1753.1. On or before January 1, 2024, the Department shall adopt emergency regulations to implement the recommendations in California State Auditor Report 2021-123 on the California Hospice Licensure and Oversight (March 29, 2022). The department shall maintain the general moratorium on new hospice agency licenses until the department adopts the regulations, but in no event later than March 29, 2024. The emergency regulations shall do all of the following:

(a) Establish time and distance standards that define the maximum time and distance hospice agency staff may travel to reach patients, taking into consideration typical traffic conditions and whether the hospice agency is serving patients in rural or urban areas.

(b) Establish standards for a hospice agency’s ratio of nurses to patients.

(c) Establish a limit for the number of hospice agencies that hospice agency management personnel can be involved with concurrently.

(d) Require hospice agency management personnel to meet minimum standards of training and experience, including, but not limited to, hospice-specific training or experience.

(e) Establish specific requirements for hospice agency office space.

(f) Establish timelines for reporting changes to application information including, but not limited to, change of mailing address, change of location, and change of name.

SEC. 8. Section 1755 of the Health and Safety Code is amended to read:

1755. (a) The department may deny any application for licensure, or suspend or revoke any license issued, under this chapter upon any of the following grounds:

(1) Violation by the applicant or licensee of this chapter or any rules and regulations promulgated by the department under this chapter, including improperly certifying a patient as eligible for hospice care.

(2) Prior termination from the federal Medicare program or the Medi-Cal program due to noncompliance, or licensure suspension or revocation, of a hospice agency owned, operated, or managed by the applicant or licensee.

(3) Demonstration of a pattern and practice of violations of state or federal standards during the last three years of a hospice agency owned, operated, or managed by the applicant or licensee.

(4) Presence on the List of Excluded Individuals/Entities of the United States Department of Health and Human Services Office of Inspector General of the applicant or licensee.

(5) Any felony conviction of the applicant or licensee for the violation of any law of this state.

(6) Any conviction of the applicant or licensee for aiding, abetting, or permitting the commission of any act that is a felony in this state.

(7) The applicant’s or licensee’s misrepresentation of a material fact in the application for a license under this chapter.

(8) Failure by hospice agency management personnel to cooperate with the department for the purposes of conducting an inspection or complaint investigation.

(9) Failure by a hospice agency to report a change in owner, hospice agency management personnel, service area, or location.

(b) Proceedings for the denial, suspension, or revocation of licenses under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. In the case of a conflict between this chapter and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, Chapter 5 (commencing with Section 11500) shall control.

SEC. 9. The Legislature finds and declares that Section 5 of this act, which adds Section 1752.1 of the Health and Safety Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect individual privacy and encourage the identification of violations of requirements applicable to accredited hospices, it is necessary to limit the public's right of access.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.