AMENDED IN ASSEMBLY APRIL 22, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 950

Introduced by Assembly Member Hernandez

February 26, 2009

An act to amend Sections 1250, 1250.1, 1746, 128700, and 128755 of, and to add Sections ~~1520.6, 1568.043, 1569.173, 1749.1,~~ *1749.1* and 1749.3 to, the Health and Safety Code, relating to hospice care.

LEGISLATIVE COUNSEL'S DIGEST

AB 950, as amended, Hernandez. Hospice providers: licensed hospice facilities.

Under existing law, the State Department of Public Health licenses and regulates health care facilities, including adult residential facilities, residential care facilities, and residential care facilities for the elderly. Under existing law, the department also licenses and regulates hospices and the provision of hospice services. Violation of these provisions is a crime.

This bill would create as a new category for, and require the department to license and regulate, hospice facilities, as defined. ~~The bill would allow adult residential facilities, residential care facilities for the chronically ill, and residential care facilities for the elderly to lease a contiguous space in that facility for a hospice facility under specified conditions.~~

Under existing law, any interested person may petition a state agency requesting the adoption of a regulation. Existing law requires the state

agency to either deny the petition, as prescribed, or schedule the matter for a public hearing, as prescribed.

This bill would permit the department to avoid drafting regulations required to implement the bill if the California Hospice and Palliative Care Association drafts the regulations, as specified, and submits the draft regulations as a petition for regulation for the department's review and approval.

Because this bill would create a new crime, it would impose a state-mandated local program.

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. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Hospice is a special type of health care service designed to provide palliative care and to alleviate the physical, emotional, social, and spiritual discomforts of an individual who is experiencing the last phases of life due to terminal illness.

(b) Hospice services provide supportive care to the primary caregiver and family of the patient.

(c) Hospice services are provided primarily in the home, but can also be provided in residential care or in health facility inpatient settings.

(d) Persons who do not have family or caregivers who are able to provide care in the home should be able to have care provided in a home-like environment, rather than in an institutional setting, if that is their preference.

(e) Permitting the establishment of licensed hospice facilities provides additional care and treatment options for persons who are at the end of life.

(f) The establishment of licensed hospice facilities is permitted under federal law and by many other states.

(g) Permitting the establishment of licensed hospice facilities is consistent with federal legal affirmations of the right of an individual to refuse life-sustaining treatment and that each person's preferences about his or her end-of-life care should be considered.

(h) Permitting the establishment of licensed hospice facilities is also consistent with the decision of the United States Supreme Court in Olmstead v. L.C. by Zimring (1999) 527 U.S. 581, which held that persons with disabilities have the right to live in the most integrated setting possible with appropriate access to care and choice of community-based services and placement options.

(i) It is the intent of the Legislature to permit the licensure of hospice inpatient facilities in order to improve access to care, to provide additional care options, and to provide for a home-like environment within which to provide care and treatment for persons who are experiencing the last phases of life.

SEC. 2. Section 1250 of the Health and Safety Code is amended to read:

1250. As used in this chapter, "health facility" means any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on separate premises as provided in Section 1250.8. A general acute care hospital that exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital that, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another

acute care hospital may continue to provide these surgical and anesthesia services through a contract or agreement with an acute care hospital. The general acute care hospital operated by the State Department of Developmental Services at Agnews Developmental Center may, until June 30, 2007, provide surgery and anesthesia services through a contract or agreement with another acute care hospital. Notwithstanding the requirements of this subdivision, a general acute care hospital operated by the Department of Corrections and Rehabilitation or the Department of Veterans Affairs may provide surgery and anesthesia services during normal weekday working hours, and not provide these services during other hours of the weekday or on weekends or holidays, if the general acute care hospital otherwise meets the requirements of this section.

A "general acute care hospital" includes a "rural general acute care hospital." However, a "rural general acute care hospital" shall not be required by the department to provide surgery and anesthesia services. A "rural general acute care hospital" shall meet either of the following conditions:

(1) The hospital meets criteria for designation within peer group six or eight, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982.

(2) The hospital meets the criteria for designation within peer group five or seven, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982, and has no more than 76 acute care beds and is located in a census dwelling place of 15,000 or less population according to the 1980 federal census.

(b) "Acute psychiatric hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff who provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) "Skilled nursing facility" means 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.

(d) "Intermediate care facility" means a health facility that provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) "Intermediate care facility/developmentally disabled habilitative" means a facility with a capacity of 4 to 15 beds that provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician and surgeon as not requiring availability of continuous skilled nursing care.

(f) "Special hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff who provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility that provides 24-hour personal care, habilitation, developmental, and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) "Intermediate care facility/developmentally disabled—nursing" means a facility with a capacity of 4 to 15 beds that provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician and surgeon as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i) (1) "Congregate living health facility" means a residential home with a capacity, except as provided in paragraph (4), of no more than 12 beds, that provides inpatient care, including the following basic services: medical supervision, 24-hour skilled nursing and supportive care, pharmacy, dietary, social, recreational, and at least one type of service specified in paragraph (2). The primary need of congregate living health facility residents shall be for availability of skilled nursing care on a recurring,

intermittent, extended, or continuous basis. This care is generally less intense than that provided in general acute care hospitals but more intense than that provided in skilled nursing facilities.

(2) Congregate living health facilities shall provide one of the following services:

(A) Services for persons who are mentally alert, physically disabled persons, who may be ventilator dependent.

(B) Services for persons who have a diagnosis of terminal illness, a diagnosis of a life-threatening illness, or both. Terminal illness means the individual has a life expectancy of six months or less as stated in writing by his or her attending physician and surgeon. A "life-threatening illness" means the individual has an illness that can lead to a possibility of a termination of life within five years or less as stated in writing by his or her attending physician and surgeon.

(C) Services for persons who are catastrophically and severely disabled. A catastrophically and severely disabled person means a person whose origin of disability was acquired through trauma or nondegenerative neurologic illness, for whom it has been determined that active rehabilitation would be beneficial and to whom these services are being provided. Services offered by a congregate living health facility to a catastrophically disabled person shall include, but not be limited to, speech, physical, and occupational therapy.

(3) A congregate living health facility license shall specify which of the types of persons described in paragraph (2) to whom a facility is licensed to provide services.

(4) (A) A facility operated by a city and county for the purposes of delivering services under this section may have a capacity of 59 beds.

(B) A congregate living health facility not operated by a city and county servicing persons who are terminally ill, persons who have been diagnosed with a life-threatening illness, or both, that is located in a county with a population of 500,000 or more persons may have not more than 25 beds for the purpose of serving terminally ill persons.

(C) A congregate living health facility not operated by a city and county serving persons who are catastrophically and severely disabled, as defined in subparagraph (C) of paragraph (2) that is located in a county of 500,000 or more persons may have not more

than 12 beds for the purpose of serving catastrophically and severely disabled persons.

(5) A congregate living health facility shall have a noninstitutional, homelike environment.

(j) (1) "Correctional treatment center" means a health facility operated by the Department of Corrections and Rehabilitation, or a county, city, or city and county law enforcement agency that, as determined by the state department, provides inpatient health services to that portion of the inmate population who do not require a general acute care level of basic services. This definition shall not apply to those areas of a law enforcement facility that houses inmates or wards who may be receiving outpatient services and are housed separately for reasons of improved access to health care, security, and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician and surgeon, psychiatrist, psychologist, nursing, pharmacy, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

(4) Physician and surgeon services shall be readily available in a correctional treatment center on a 24-hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the general acute care hospitals at the California Medical Facility, the California Men's Colony, and the California Institution for Men. This subdivision shall not be construed to prohibit the Department of Corrections and Rehabilitation from obtaining a correctional treatment center license at these sites.

(k) "Nursing facility" means a health facility licensed pursuant to this chapter that is certified to participate as a provider of care

either as a skilled nursing facility in the federal Medicare Program under Title XVIII of the federal Social Security Act or as a nursing facility in the federal Medicaid Program under Title XIX of the federal Social Security Act, or as both.

(*l*) Regulations defining a correctional treatment center described in subdivision (j) that is operated by a county, city, or city and county, the Department of Corrections and Rehabilitation, shall not become effective prior to, or if effective, shall be inoperative until January 1, 1996, and until that time these correctional facilities are exempt from any licensing requirements.

(m) "Hospice facility" means a facility licensed pursuant to Sections 1749.1 and 1749.3.

SEC. 3. Section 1250.1 of the Health and Safety Code is amended to read:

1250.1. (a) The state department shall adopt regulations that define all of the following bed classifications for health facilities:

(1) General acute care.

(2) Skilled nursing.

(3) Intermediate care-developmental disabilities.

(4) Intermediate care—other.

(5) Acute psychiatric.

(6) Specialized care, with respect to special hospitals only.

(7) Chemical dependency recovery.

(8) Intermediate care facility/developmentally disabled habilitative.

(9) Intermediate care facility/developmentally disabled nursing.

(10) Congregate living health facility.

(11) Pediatric day health and respite care facility, as defined in Section 1760.2.

(12) Correctional treatment center. For correctional treatment centers that provide psychiatric and psychological services provided by county mental health agencies in local detention facilities, the State Department of Mental Health shall adopt regulations specifying acute and nonacute levels of 24-hour care. Licensed inpatient beds in a correctional treatment center shall be used only for the purpose of providing health services.

(13) Hospice facility. ~~The department shall consult with the State Department of Social Services, the Office of Statewide Health Planning and Development, and the Office of the State Fire Marshal when drafting regulations pursuant to this section.~~

(b) Except as provided in Section 1253.1, beds classified as intermediate care beds, on September 27, 1978, shall be reclassified by the state department as intermediate care—other. This reclassification shall not constitute a "project" within the meaning of Section 127170 and shall not be subject to any requirement for a certificate of need under Chapter 1 (commencing with Section 127125) of Part 2 of Division 107, and regulations of the state department governing intermediate care prior to the effective date shall continue to be applicable to the intermediate care—other classification unless and until amended or repealed by the state department.

~~SEC. 4. Section 1520.6 is added to the Health and Safety Code, to read:~~

~~1520.6. (a) (1) An adult residential facility, as defined in paragraph (5) of subdivision (a) of Section 80001 of Title 22 of the California Code of Regulations, licensed pursuant to this chapter, may lease contiguous beds or space to a licensed hospice facility, as defined in subdivision (m) of Section 1250, in accordance with this section. The adult residential facility shall obtain written approval from the department at least 30 days before the effective date of the lease. For purposes of this section, "contiguous beds or space" means a separate unit, wing, floor, building, or grouping of beds, offices, or rooms that are used exclusively for the purposes of operating a licensed hospice facility and does not contain any space used by the adult residential facility.~~

~~(2) Not more than 25 percent of the adult residential facility's total bed capacity shall be used for purposes of a hospice facility, unless the department issues an exemption.~~

~~(3) Notwithstanding paragraph (2), the department may issue regulations that increase the maximum percentage of total bed capacity used for a hospice facility.~~

~~(b) When a portion of an adult residential facility is leased for the purpose described in subdivision (a), the department shall issue a new license to the licensee of the adult residential facility that does not include the number of beds leased to the hospice facility. The department may request a new plan of operation from the licensee that demonstrates the licensee's ability to meet all licensing requirements within the proximity of the hospice facility.~~

~~(c) Nothing in this subdivision shall prohibit staff from being employees of both the adult residential facility and the hospice~~

~~facility. The staff of the adult residential facility shall not simultaneously provide care or services to residents of both facilities.~~

~~(d) Hospice facility patients shall not be subject to the requirements of paragraph (1) of subdivision (b) of Section 1522.~~

~~(e) Common areas used by residents of the adult residential facility shall not be routinely used as common areas for hospice patients, except as provided by mutual agreement between the facilities.~~

~~(f) Nothing in this section shall prohibit residents of the adult residential facility or patients of the hospice facility from visiting each other, provided all licensing requirements for visitors are met.~~

~~(g) A licensed hospice facility that is located within an existing licensed adult residential facility shall assume full and complete responsibility for complying with all applicable licensing and certification requirements when providing hospice care to patients within the hospice facility, whether hospice services are provided directly by, or under contract with, the licensee. Unless specified by contract, in no event shall a licensed adult residential facility be responsible for the operations of, or assume any liability in connection with, the hospice facility.~~

~~SEC. 5. Section 1568.043 is added to the Health and Safety Code, to read:~~

~~1568.043. (a) (1) A residential care facility that is licensed pursuant to this chapter may lease contiguous beds or space to a licensed hospice facility, as defined in subdivision (m) of Section 1250, in accordance with this section. The residential care facility shall obtain written approval from the department at least 30 days before the effective date of the lease. For purposes of this section, "contiguous beds or space" means a separate unit, wing, floor, building, or grouping of beds, offices, or rooms that are used exclusively for the purposes of operating a licensed hospice facility and does not contain any space used by the residential care facility.~~

~~(2) Not more than 25 percent of the residential care facility's total bed capacity shall be used for purposes of a hospice facility, unless the department issues an exemption.~~

~~(3) Notwithstanding paragraph (2), the department may issue regulations that increase the maximum percentage of total bed capacity used for a hospice facility.~~

~~(b) When a portion of a residential care facility is leased for the purpose described in subdivision (a), the department shall issue a new license to the licensee of the residential care facility that does not include the number of beds leased to the hospice facility. The department may request a new plan of operation from the licensee that demonstrates the licensee's ability to meet all licensing requirements within the proximity of the hospice facility.~~

~~(c) Nothing in this subdivision shall prohibit staff from being employees of both the residential care facility and the hospice facility. The staff of the residential care facility shall not simultaneously provide care or services to residents of both facilities.~~

~~(d) Hospice facility patients shall not be subject to the requirements of paragraph (2) of subdivision (b) of Section 1568.09.~~

~~(e) Common areas used by residents of the residential care facility shall not be routinely used as common areas for hospice patients, except as provided by mutual agreement between the facilities.~~

~~(f) Nothing in this section shall prohibit residents of the residential care facility or patients of the hospice facility from visiting each other, provided that all licensing requirements for visitors are met.~~

~~(g) A licensed hospice facility that is located within an existing licensed residential care facility shall assume full and complete responsibility for complying with all applicable licensing and certification requirements when providing hospice care to patients within the hospice facility, whether hospice services are provided directly by, or under contract with, the licensee. Unless specified by contract, in no event shall a licensed residential care facility be responsible for the operations of, or assume any liability in connection with, the hospice facility.~~

~~SEC. 6. Section 1569.173 is added to the Health and Safety Code, to read:~~

~~1569.173. (a) (1) A residential care facility for the elderly licensed pursuant to this chapter may lease contiguous beds or space to a licensed hospice facility, as defined in subdivision (m) of Section 1250, in accordance with this section. The residential care facility for the elderly shall obtain prior written approval from the department at least 30 days before the effective date of the~~

~~lease. For purposes of this section, "contiguous beds or space" means a separate unit, wing, floor, building, or grouping of beds, offices, or rooms that are used exclusively for the purposes of operating a licensed hospice facility.~~

~~(2) Not more than 25 percent of the residential care facility for the elderly's total bed capacity shall be used for purposes of a licensed hospice facility, unless the department issues an exemption.~~

~~(3) Notwithstanding paragraph (2), the department may issue regulations that increase the maximum percentage of total bed capacity used for a hospice facility.~~

~~(b) When a portion of a residential care facility for the elderly is leased for the purpose described in subdivision (a), the department shall issue a new license to the licensee of the residential facility for the elderly that does not include the number of beds leased to the hospice facility. The department may request a new plan of operation from the licensee that demonstrates the licensee's ability to meet all licensing requirements within the proximity of the hospice facility.~~

~~(c) Nothing in this subdivision shall prohibit staff from being employees of both the residential care facility for the elderly and the hospice facility. The staff of the residential care facility shall not simultaneously provide care or services to residents of both facilities.~~

~~(d) Hospice facility patients shall not be subject to the requirements of subparagraph (B) of paragraph (1) of subdivision (b) of Section 1569.17.~~

~~(e) Common areas used by residents of the residential care facility for the elderly shall not be routinely used as common areas for hospice patients, except as provided by mutual agreement between the facilities.~~

~~(f) Nothing in this section shall prohibit residents of the residential care facility for the elderly or patients of the hospice facility from visiting each other, provided that all licensing requirements for visitors are met.~~

~~(g) A licensed hospice facility that is located within an existing licensed residential care facility for the elderly shall assume full and complete responsibility for complying with all applicable licensing and certification requirements when providing hospice care to patients within the hospice facility, whether hospice services~~

~~are provided directly by, or under contract with, the licensee. Unless specified by contract, in no event shall a licensed residential care facility for the elderly be responsible for the operations of, or assume any liability in connection with, the hospice facility.~~

~~SEC. 7.~~

SEC. 4. Section 1746 of the Health and Safety Code is amended to read:

1746. For purposes of this chapter, the following definitions apply:

(a) "Bereavement services" means those services available to the surviving family members for a period of at least one year after the death of the patient, including an assessment of the needs of the bereaved family and the development of a care plan that meets these needs, both prior to and following the death of the patient.

(b) "Home health aide" has the same meaning as set forth in subdivision (c) of Section 1727.

(c) "Home health aide services" means those services described in subdivision (d) of Section 1727 that provide for the personal care of the terminally ill patient and the performance of related tasks in the patient's home in accordance with the plan of care in order to increase the level of comfort and to maintain personal hygiene and a safe, healthy environment for the patient.

(d) "Hospice" means a specialized form of interdisciplinary health care that is designed to provide palliative care, alleviate the physical, emotional, social, and spiritual discomforts of an individual who is experiencing the last phases of life due to the existence of a terminal disease, and provide supportive care to the primary caregiver and the family of the hospice patient, and that meets all of the following criteria:

(1) Considers the patient and the patient's family, in addition to the patient, as the unit of care.

(2) Utilizes an interdisciplinary team to assess the physical, medical, psychological, social, and spiritual needs of the patient and the patient's family.

(3) Requires the interdisciplinary team to develop an overall plan of care and to provide coordinated care that emphasizes supportive services, including, but not limited to, home care, pain control, and limited inpatient services. Limited inpatient services are intended to ensure both continuity of care and appropriateness of services for those patients who cannot be managed at home

because of acute complications or the temporary absence of a capable primary caregiver.

(4) Provides for the palliative medical treatment of pain and other symptoms associated with a terminal disease, but does not provide for efforts to cure the disease.

(5) Provides for bereavement services following death to assist the family in coping with social and emotional needs associated with the death of the patient.

(6) Actively utilizes volunteers in the delivery of hospice services.

(7) To the extent appropriate, based on the medical needs of the patient, provides services in the patient's home or primary place of residence.

(e) "Hospice facility" means a health facility that has been licensed pursuant to Sections 1749.1 and 1749.3 by the department for the provision of hospice care, including routine care, continuous care, inpatient respite care, and general inpatient care. Hospice facility licensure shall be granted only to licensed and certified hospices licensed in California.

(f) "Inpatient care arrangements" means arranging for those short inpatient stays that may become necessary to manage acute symptoms or because of the temporary absence, or need for respite, of a capable primary caregiver. The hospice shall arrange for these stays, ensuring both continuity of care and the appropriateness of services.

(g) "Interdisciplinary team" means the hospice care team that includes, but is not limited to, the patient and patient's family, a physician and surgeon, a registered nurse, a social worker, a volunteer, and a spiritual caregiver. The team shall be coordinated by a registered nurse and shall be under medical direction. The team shall meet regularly to develop and maintain an appropriate plan of care.

(h) "Medical direction" means those services provided by a licensed physician and surgeon who is charged with the responsibility of acting as a consultant to the interdisciplinary team, a consultant to the patient's attending physician and surgeon, as requested, with regard to pain and symptom management, and a liaison with physicians and surgeons in the community.

(i) "Multiple location" means a location or site from which a hospice makes available basic hospice services within the service

area of the parent agency. A multiple location shares administration, supervision, policies and procedures, and services with the parent agency in a manner that renders it unnecessary for the site to independently meet the licensing requirements.

(j) "Palliative" refers to medical treatment, interdisciplinary care, or consultation provided to the patient or family members, or both, that has as its primary purpose preventing or relieving suffering and enhancing the quality of life, rather than curing the disease, as described in subdivision (b) of Section 1339.31, of a patient who has an end-stage medical condition.

(k) "Parent agency" means the part of the hospice that is licensed pursuant to this chapter and that develops and maintains administrative controls of multiple locations. All services provided by the multiple locations and parent agency are the responsibility of the parent agency.

(*l*) "Plan of care" means a written plan developed by the attending physician and surgeon, the medical director or physician and surgeon designee, and the interdisciplinary team that addresses the needs of a patient and family admitted to the hospice program. The hospice shall retain overall responsibility for the development and maintenance of the plan of care and quality of services delivered.

(m) "Preliminary services" means those services authorized pursuant to subdivision (d) of Section 1749.

(n) "Skilled nursing services" means nursing services provided by or under the supervision of a registered nurse under a plan of care developed by the interdisciplinary team and the patient's physician and surgeon to a patient and his or her family that pertain to the palliative, supportive services required by patients with a terminal illness. Skilled nursing services include, but are not limited to, patient assessment, evaluation and case management of the medical nursing needs of the patient, the performance of prescribed medical treatment for pain and symptom control, the provision of emotional support to both the patient and his or her family, and the instruction of caregivers in providing personal care to the patient. Skilled nursing services shall provide for the continuity of services for the patient and his or her family. Skilled nursing services shall be available on a 24-hour on-call basis.

(o) "Social services/counseling services" means those counseling and spiritual care services that assist the patient and his or her

family to minimize stresses and problems that arise from social, economic, psychological, or spiritual needs by utilizing appropriate community resources, and maximize positive aspects and opportunities for growth.

(p) "Terminal disease" or "terminal illness" means a medical condition resulting in a prognosis of life of one year or less, if the disease follows its natural course.

(q) "Volunteer services" means those services provided by trained hospice volunteers who have agreed to provide service under the direction of a hospice staff member who has been designated by the hospice to provide direction to hospice volunteers. Hospice volunteers may be used to provide support and companionship to the patient and his or her family during the remaining days of the patient's life and to the surviving family following the patient's death.

~~SEC. 8.~~

SEC. 5. Section 1749.1 is added to the Health and Safety Code, to read:

1749.1. (a) Hospices licensed and certified in California may apply for a hospice facility license. ~~A hospice facility~~ *On or after the effective date of regulations to implement this section, a hospice provider that provides hospice services to a patient in a facility that the hospice owns or operates* shall be both licensed, and certified to participate as a provider of hospice care in the federal Medicare program under Title XVIII of the federal Social Security Act (42 U.S.C. Sec. 1395 et seq.). A hospice facility shall be separately licensed, irrespective of the location of the facility.

(b) Hospice facility licensees shall be responsible for obtaining criminal background checks for employees, volunteers, and contractors in accordance with federal Medicare conditions of participation (42 C.F.R. 418 et seq.) and as may be required in accordance with state law. The hospice facility licensee shall pay the costs of obtaining a criminal background check.

(c) Building standards adopted pursuant to this section relating to fire and panic safety, and other regulations adopted pursuant to this section, shall apply uniformly throughout the state. No city, county, city and county, including a charter city or charter county, or fire protection district shall adopt or enforce any ordinance or local rule or regulation relating to fire and panic safety in buildings

or structures subject to this section that is inconsistent with the rules and regulations adopted pursuant to this section.

(d) The hospice facility shall meet ~~the~~ *On or after the effective date of regulations to implement this section, the* fire protection standards set forth in federal Medicare conditions of participation (42 C.F.R. 418 et seq.).

(e) A hospice facility ~~may~~ *shall* operate as a freestanding ~~facility, but may also be located adjacent to, physically connected to, or on the building grounds of another health facility or residential care facility. Freestanding hospice facilities~~ *facility. A hospice facility* shall not be required to submit construction plans to the Office of Statewide Health Planning and Development for new construction or renovation. As part of the application for licensure, the prospective licensee shall submit evidence of compliance with local building codes. In addition, the physical environment of the facility shall be adequate to provide the level of care and service required by the residents of the facility as determined by the department.

~~(f) A hospice facility may be located in all or a portion of an existing health facility, adult residential facility, residential care facility for the chronically ill, or residential care facility for the elderly and may lease space from that facility. The area leased by the hospice facility shall be made up of contiguous beds in a separate unit or floor within the leasing facility. The hospice facility shall be identifiable as a separately-operating health facility and shall have separate signage.~~

~~(g) A hospice facility that is located in all or a portion of another health facility shall be subject to all of the following:~~

~~(1) The hospice facility shall not be required to submit construction plans to the Office of Statewide Health Planning and Development for new construction or renovation, unless the hospice facility is located within the physical plant of a health facility that is otherwise required to submit plans to the Office of Statewide Health Planning and Development.~~

~~(2) As part of the application for licensure, the prospective licensee shall submit evidence of compliance with local building codes. In addition, the physical environment of the facility shall be adequate to provide the level of care and service required by the residents of the facility as determined by the department.~~

~~(3) The hospice facility shall assume full and complete responsibility for complying with all applicable licensing and certification requirements when providing hospice care to patients within the hospice facility, whether hospice services are provided directly by, or under contract with, the licensee. Unless specified by contract, in no event shall the licensed health facility in which a hospice facility is located be responsible for the operations of, or assume any liability in connection with, the hospice facility.~~

~~(4) Notwithstanding any other law, a health facility may place all or a portion of its licensed bed capacity in voluntary suspension in order to lease that space to a licensed hospice facility. The health facility shall obtain written approval from the department and provide written notification to the Office of Statewide Health Planning and Development at least 30 days prior to the effective date of the lease. The period of voluntary suspension shall coincide with the duration of the hospice facility license. Upon termination of the lease agreements, termination, temporary suspension, revocation, or cancellation of the license, termination of Medicare or Medicaid certification, or voluntary surrender of the hospice facility or hospice program license, the bed capacity shall be removed from voluntary suspension and reinstated to the health facility within which the hospice facility was located.~~

~~(h) A hospice facility that is located in all or a portion of an adult residential facility, residential care facility for the chronically ill, or residential care facility for the elderly shall be subject to all of the following:~~

~~(1) The hospice facility shall not be required to submit construction plans to the Office of Statewide Health Planning and Development for new construction or renovation.~~

~~(2) The hospice facility shall assume full and complete responsibility for complying with all applicable licensing and certification requirements when providing hospice care to patients within the hospice facility, whether hospice services are provided directly by, or under contract with, the licensee. Unless specified by contract, in no event shall the licensed adult residential facility, residential care facility for the chronically ill, or residential care facility for the elderly, in which a hospice facility is located, be responsible for the operations of, or assume any liability in connection with, the hospice facility.~~

~~(i) A person who is excluded under Section 1558, 1568.092, or 1569.58 shall not be a member of a hospice facility board of directors, or a licensee, contractor, volunteer, or employee of a hospice facility located in a portion of a residential care facility.~~

~~SEC. 9.~~

SEC. 6. Section 1749.3 is added to the Health and Safety Code, to read:

1749.3. (a) In order for a hospice program to be licensed as a hospice facility, it shall provide, or make provision for, all of the following services and requirements:

(1) Medical direction and adequate staff.

(2) Skilled nursing services.

(3) Palliative care.

(4) Social services and counseling services.

(5) Bereavement services.

(6) Volunteer services.

(7) Dietary services.

(8) Pharmaceutical services.

(9) Physical therapy, occupational therapy, and speech-language therapy.

(10) Patient rights.

(11) Disaster preparedness.

(12) An adequate, safe, and sanitary physical environment.

(13) Housekeeping services.

(14) Patient medical records.

(15) Other administrative requirements.

(b) The department shall adopt regulations that establish standards for the provision of the services in subdivision (a). These regulations shall include, but are not limited to, all of the following:

(1) Minimum staffing standards that require at least one licensed nurse to be on duty 24 hours per day and a maximum of six patients at any given time per direct care staffperson.

(2) Patients rights provisions that provide each patient with all of the following:

(A) Full information regarding his or her health status and options for end-of-life care.

(B) Care that reflects individual preferences regarding end-of-life care, including the right to refuse any treatment or procedure.

(C) Treatment with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and care of personal needs.

(D) Entitlement to visitors of his or her choosing, at any time the patient chooses, and ensured privacy for those visits.

(3) Disaster preparedness plans for both internal and external disasters that protect hospice patients, employees, and visitors, and reflect coordination with local agencies that are responsible for disaster preparedness and emergency response.

(4) Additional qualifications and requirements for licensure above the requirements of this section and Section 1749.1.

(c) The hospice facility shall provide a home-like environment that is comfortable and accommodating to both the patient and the patient's visitors.

(d) The hospice facility shall continue to provide services to family and friends after the patient's stay in the hospice facility in accordance with the patient's plan of care. These services may be provided by the hospice program that operates the hospice facility..

(e) The hospice facility shall demonstrate the ability to meet licensing requirements and shall be fully responsible for meeting all licensing requirements, regardless of whether those requirements are met through direct provision by the facility or under contract with another entity. The hospice facility's reliance on contractors to meet the licensing requirements does not exempt the hospice facility or in any way mitigate the hospice facility's responsibilities.

~~SEC. 10.~~

SEC. 7. Section 128700 of the Health and Safety Code is amended to read:

128700. As used in this chapter, the following definitions apply:

(a) "Ambulatory surgery procedures" means those procedures performed on an outpatient basis in the general operating rooms, ambulatory surgery rooms, endoscopy units, or cardiac catheterization laboratories of a hospital or a freestanding ambulatory surgery clinic.

(b) "Commission" means the California Health Policy and Data Advisory Commission.

(c) "Emergency department" means, in a hospital licensed to provide emergency medical services, the location in which those services are provided.

(d) "Encounter" means a face-to-face contact between a patient and the provider who has primary responsibility for assessing and treating the condition of the patient at a given contact and exercises independent judgment in the care of the patient.

(e) "Freestanding ambulatory surgery clinic" means a surgical clinic that is licensed by the state under paragraph (1) of subdivision (b) of Section 1204.

(f) "Health facility" or "health facilities" means all health facilities required to be licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.

(g) "Hospital" means all health facilities except skilled nursing, intermediate care, hospice facilities, and congregate living health facilities.

(h) "Office" means the Office of Statewide Health Planning and Development.

(i) "Risk-adjusted outcomes" means the clinical outcomes of patients grouped by diagnoses or procedures that have been adjusted for demographic and clinical factors.

~~SEC. 11.~~

SEC. 8. Section 128755 of the Health and Safety Code is amended to read:

128755. (a) (1) Hospitals shall file the reports required by subdivisions (a), (b), (c), and (d) of Section 128735 with the office within four months after the close of the hospital's fiscal year except as provided in paragraph (2).

(2) If a licensee relinquishes the facility license or puts the facility license in suspense, the last day of active licensure shall be deemed a fiscal year end.

(3) The office shall make the reports filed pursuant to this subdivision available no later than three months after they were filed.

(b) (1) Skilled nursing facilities, intermediate care facilities, intermediate care facilities/developmentally disabled, hospice facilities, and congregate living facilities, including nursing facilities certified by the state department to participate in the Medi-Cal program, shall file the reports required by subdivisions (a), (b), (c), and (d) of Section 128735 with the office within four months after the close of the facility's fiscal year, except as provided in paragraph (2).

(2) (A) If a licensee relinquishes the facility license or puts the facility licensure in suspense, the last day of active licensure shall be deemed a fiscal year end.

(B) If a fiscal year end is created because the facility license is relinquished or put in suspense, the facility shall file the reports required by subdivisions (a), (b), (c), and (d) of Section 128735 within two months after the last day of active licensure.

(3) The office shall make the reports filed pursuant to paragraph (1) available not later than three months after they are filed.

(4) (A) Effective for fiscal years ending on or after December 31, 1991, the reports required by subdivisions (a), (b), (c), and (d) of Section 128735 shall be filed with the office by electronic media, as determined by the office.

(B) Congregate living health facilities are exempt from the electronic media reporting requirements of subparagraph (A).

(c) A hospital shall file the reports required by subdivision (g) of Section 128735 as follows:

(1) For patient discharges on or after January 1, 1999, through December 31, 1999, the reports shall be filed semiannually by each hospital or its designee not later than six months after the end of each semiannual period, and shall be available from the office no later than six months after the date that the report was filed.

(2) For patient discharges on or after January 1, 2000, through December 31, 2000, the reports shall be filed semiannually by each hospital or its designee not later than three months after the end of each semiannual period. The reports shall be filed by electronic tape, diskette, or similar medium as approved by the office. The office shall approve or reject each report within 15 days of receiving it. If a report does not meet the standards established by the office, it shall not be approved as filed and shall be rejected. The report shall be considered not filed as of the date the facility is notified that the report is rejected. A report shall be available from the office no later than 15 days after the date that the report is approved.

(3) For patient discharges on or after January 1, 2001, the reports shall be filed by each hospital or its designee for report periods and at times determined by the office. The reports shall be filed by online transmission in formats consistent with national standards for the exchange of electronic information. The office shall approve or reject each report within 15 days of receiving it. If a report does

not meet the standards established by the office, it shall not be approved as filed and shall be rejected. The report shall be considered not filed as of the date the facility is notified that the report is rejected. A report shall be available from the office no later than 15 days after the date that the report is approved.

(d) The reports required by subdivision (a) of Section 128736 shall be filed by each hospital for report periods and at times determined by the office. The reports shall be filed by online transmission in formats consistent with national standards for the exchange of electronic information. The office shall approve or reject each report within 15 days of receiving it. If a report does not meet the standards established by the office, it shall not be approved as filed and shall be rejected. The report shall be considered not filed as of the date the facility is notified that the report is rejected. A report shall be available from the office no later than 15 days after the report is approved.

(e) The reports required by subdivision (a) of Section 128737 shall be filed by each hospital or freestanding ambulatory surgery clinic for report periods and at times determined by the office. The reports shall be filed by online transmission in formats consistent with national standards for the exchange of electronic information. The office shall approve or reject each report within 15 days of receiving it. If a report does not meet the standards established by the office, it shall not be approved as filed and shall be rejected. The report shall be considered not filed as of the date the facility is notified that the report is rejected. A report shall be available from the office no later than 15 days after the report is approved.

(f) Facilities shall not be required to maintain a full-time electronic connection to the office for the purposes of online transmission of reports as specified in subdivisions (c), (d), and (e). The office may grant exemptions to the online transmission of data requirements for limited periods to facilities. An exemption may be granted only to a facility that submits a written request and documents or demonstrates a specific need for an exemption. Exemptions shall be granted for no more than one year at a time, and for no more than a total of five consecutive years.

(g) The reports referred to in paragraph (2) of subdivision (a) of Section 128730 shall be filed with the office on the dates required by applicable law and shall be available from the office no later than six months after the date that the report was filed.

(h) The office shall post on its Internet Web site and make available to any person a copy of any report referred to in subdivision (a), (b), (c), (d), or (g) of Section 128735, subdivision (a) of Section 128736, subdivision (a) of Section 128737, Section 128740, and, in addition, shall make available in electronic formats reports referred to in subdivision (a), (b), (c), (d), or (g) of Section 128735, subdivision (a) of Section 128736, subdivision (a) of Section 128737, Section 128740, and subdivisions (a) and (c) of Section 128745, unless the office determines that an individual patient's rights of confidentiality would be violated. The office shall make the reports available at cost.

~~SEC. 12.~~

SEC. 9. The department is not required to draft the regulations required under this act if the California Hospice and Palliative Care Association drafts the necessary regulations, in consultation with the department and other state departments and stakeholders, and submits the draft regulations as a petition for regulation for the department's review and approval, pursuant to Sections 11340.6 and 11340.7 of the Government Code.

~~SEC. 13.~~

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.

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