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California Department of Public Health



EDMUND G. BROWN, JR.
Governor

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AFL 13-05

TO: All Licensed Health Care Facilities

SUBJECT: New Health Facility Category: Hospice Facility

AUTHORITY: Senate Bill (SB) 135 (Hernandez, Statutes of 2012, Chapter 473)
Health & Safety Code (HSC) Sections 1250, 1250.1, 1266, 1339.40-
1339.44, 1599, 1599.1, 1599.4, 1746, 1795, 128755, and 129725.

This All Facilities Letter (AFL) is being sent to notify you of legislative changes to the Health and Safety Code and provide information regarding the new option for a licensed and certified hospice provider to operate a licensed hospice facility.

Effective January 1, 2013, SB 135 established a new hospice facility licensure category and permits a licensed and certified hospice services provider to provide inpatient hospice care through the operation of a hospice facility.

A hospice facility is defined as a “health facility licensed pursuant to this chapter [Chapter 2], with a capacity of no more than 24 beds that provides hospice services. Hospice services include, but are not limited to, routine care, continuous care, inpatient respite care, and inpatient hospice care as defined in subdivision (d) of Section 1339.40, and is operated by a provider of hospice services that is licensed pursuant to Section 1751 and certified as a hospice pursuant to Part 418 of Title 42 of the Code of Federal Regulations (CFR)” (HSC 1250 (n)).

Currently, state law provides for the licensure of agencies providing hospice services which could be provided in the patient’s home or primary place of residence, or as a service of a Congregate Living Health Facility (CLHF), or to residents of a facility via contract, based on the medical needs of the patient.

Under the new law, hospice providers that intend to provide inpatient hospice care in their own facility must apply for a hospice facility license. Hospice providers will have the option to operate a hospice facility either as a freestanding hospice facility or as a facility that is within the physical plant of another licensed health facility. For additional

information regarding the requirements for a hospice facility that is located within the physical plant of another licensed health facility, please review HSC Section 1339.43(e).

SB 135 requires hospice facilities to comply with the federal Centers for Medicare and Medicaid Services (CMS) hospice regulations, and meet the building and fire protection standards as specified in Section 418 of Title 42 of the CFR until the Office of Statewide Health Planning and Development has developed and adopted new regulations for building and fire protection, and CDPH has developed and adopted regulations for hospice facilities. CFR Section 418.110 specifies the standards applicable to hospices that provide inpatient care directly. The inpatient care standards can be found at the following link:

[Section 418.110 of Title 42 of the CFR](#)

In addition, SB 135 prohibits any unlicensed private or public organization from:

1. Representing itself to be a hospice facility by its name or advertisement, soliciting, or any other presentments to the public, or in the context of services within the scope of the provisions of this bill imply that it is licensed to provide those services or to make any reference to employee bonding in relation to those services;
2. Using the words "hospice facility," "hospice home," "hospice-facility," or any combination of those terms, within its name; or,
3. Using words to imply that it is licensed as a hospice facility to provide those services.

Consistent with existing requirements for hospice providers, a hospice facility licensee is also required to obtain criminal background checks for its employees, volunteers, and contractors in accordance with the federal Medicare Conditions of Participation CFR Section 418.114 (d). The hospice facility licensee shall pay the costs of obtaining a criminal background check.

The hospice facility must protect and promote the rights of hospice patients. In addition to the patients' rights in Section 418.52 of Title 42 of the Code of Federal Regulations hospice facility licensees must provide each patient with the following:

1. Information at admission to a hospice facility regarding their rights as a patient.
 - a. Effective January 1, 2013, Sections 483.10, 483.12, 483.13, and 483.15 of Title 42 of the Code of Federal Regulations in effect on July 1, 2006, shall apply to each hospice facility, regardless of a resident's payment source or the Medi-Cal or Medicare certification status of the hospice facility in which the resident resides. A hospice facility is not obligated to comply with the provisions of subdivision (f) of Section 483.15 of Title 42 of the Code of Federal Regulations.
2. Full information regarding his or her health status and options for end-of-life care.

3. Care that reflects individual preferences regarding end-of-life care, including the right to refuse any treatment or procedure.
4. Treatment with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and care of personal needs.
5. Right to visitors of the patient's choosing, at any time the patient chooses, and privacy for those visits.

The Licensing & Certification fees for hospice facilities in the first year (FY13-14) will be the same fees as CLHFs. Thereafter, the licensure fee for hospice facilities shall be established based on the costs associated with performing licensing activities for the specific facility category pursuant to HSC 1266. The licensure fee is based on the number of beds on the license. Fees are updated annually on the CDPH website and can be accessed at:

<http://www.cdph.ca.gov/pubsforms/fiscalrep/Pages/default.aspx>

Providers seeking hospice facility licensure should use the Licensing and Certification form HS 200 and select the "other" facility type option and write in "hospice facility". Required hospice facility licensing and certification forms including the application form and a helpful checklist can be found at:

<http://www.cdph.ca.gov/pubsforms/forms/Pages/HealthFacility-Hospice.aspx>

The information in this AFL is a brief summary of SB 135. Facilities are responsible for following all applicable laws. CDPH's failure to expressly notify facilities of legislative changes and/or statutory and regulatory requirements does not relieve facilities of their responsibility for following all laws and for being aware of all legislative changes. Facilities should refer to the full text of Health & Safety Code Sections 1339.40-1339.44 to ensure compliance.

Please find the attached Frequently Asked Questions, which will hopefully address most of your questions related to hospice facility licensure. If you have any additional questions, please contact your respective L&C District Office. For your convenience the list of all District Office addresses and contact information can be found using the following link:

<http://www.cdph.ca.gov/certlic/facilities/Pages/LCDistrictOffices.aspx>

Sincerely,

Original signed by Pamela Dickfoss for

Debby Rogers, RN, MS, FAEN
Deputy Director
Center for Health Care Quality

Frequently Asked Questions for SB 135 Hospice Facility Licensure

1. What is the effective date of this new legislation?

A: January 1, 2013

2. How does a currently licensed CLHF (B), SNF or Special Hospital, that is operated by a hospice, submit an application to change the category of licensure to Hospice Facility?

A: A currently licensed CLHF (B), SNF or Special Hospital, must undergo the same application process as any other initial hospice facility license applicant. For your convenience, L&C has created a letter and checklist to assist you in preparing a hospice facility application package. This checklist can be found on our website at:

<http://www.cdph.ca.gov/pubsforms/forms/Pages/HealthFacility-Hospice.aspx>

Once the application package and the licensing fee have been received by your local District Office (DO), the DO will review the application package for completion. Once the completed application has been approved by the DO and required surveys are performed, the DO will issue the license accordingly.

3. What is the deadline for submitting this application, after the Department publishes guidance to providers and the district offices?

A: Effective January 1, 2013, California Department of Public Health (CDPH) Licensing & Certification (L&C) will be accepting applications for Hospice facility licensure.

4. What is the process for a licensed hospice provider to obtain licensure for a new Hospice Facility?

A: Please refer to the answer to question 2.

5. Does a provider need to become a licensed hospice before they apply for the hospice facility license, or can the applications be made concurrently?

A: Anyone interested in obtaining hospice facility licensure that is not currently a Licensed and Certified hospice service provider, would need to apply for a hospice provider license and certification prior to applying for a hospice facility license.

If an applicant applies concurrently for the provider and facility license, they would first need to be approved as a licensed and certified hospice provider prior to receiving a hospice facility license approval.

Please note: If the applicant submits both an application for a hospice provider license and a hospice facility license concurrently, and is denied hospice provider licensure, the application for a hospice facility license will also be denied and the application fees will not be refunded.

6. How will the application process for a free-standing hospice facility differ from a hospice facility that is physically-located within another health facility?

A: The application process is the same for a freestanding hospice facility and a hospice facility that is physically-located within another health facility with the exception of the building

requirements. A freestanding hospice facility must meet applicable building standards and requirements relating to the physical environment of the facility as specified in Section 418 of Title 42 of the CFR. These standards will be enforced by the local building department. A hospice facility that is located within the physical plant of another licensed health facility that is under the jurisdiction of the Office of Statewide Health Planning and Development (OSHPD) must meet the building standards for the category of health facility within which the hospice facility will be located. These standards will be enforced by OSHPD.

7. Are there circumstances under which a separately-licensed hospice facility could be located within a community care facility?

A: No. A hospice facility may be located within the physical plant of another licensed health facility (e.g. SNF or general acute care hospital). A community care facility is not defined as a health facility pursuant to Health & Safety Code (HSC) Section 1250.

8. Must a facility owned and operated by a hospice provider, where general inpatient care is provided, apply to become a hospice facility?

A: Yes. A hospice provider that intends to provide inpatient hospice care in the hospice provider's own facility must submit an application and fee for licensure as a hospice facility (HSC 1339.41 (b)).

9. If a hospice provider-owned facility does not intend to provide general inpatient care, can they remain licensed as a CLHF (B), or other category of licensure?

A: Yes, but they must refrain from using the word "hospice" in the facility name. Only a licensed hospice facility can use "hospice" in their name. See the answer to question 10.

10. Can any licensed facility continue to use the word, "hospice" in the name of their facility, if they are not licensed as a Hospice Facility?

A: No. Any unlicensed private or public organization must refrain from:

1. Representing itself to be a hospice facility by its name or advertisement, soliciting, or any other presentments to the public, or in the context of services within the scope of the provisions of this bill imply that it is licensed to provide those services or to make any reference to employee bonding in relation to those services;
2. Using the words "hospice facility," "hospice home," "hospice-facility," or any combination of those terms, within its name; or,
3. Using words to imply that it is licensed as a hospice facility to provide those services.

11. What is the survey cycle for hospice facilities under state licensing law, and under the federal certification process?

A: State law requires health facilities to be inspected no less than once every two years and as often as necessary to ensure the quality of care being provided (HSC 1279). Centers for Medicare & Medicaid Services (CMS) states recertification surveys are done an average of every 6 years.

12. Can a home health agency (HHA) that provides hospice services apply to operate a hospice facility?

A: No. In order to be eligible to apply for a hospice facility license, the HHA must first obtain a license as a hospice provider.

13. What is the fee structure for hospice facilities, and how frequently is the fee paid to the department?

A: The Licensing & Certification fees for hospice facilities in the first year (FY13-14) will be the same fees as CLHFs. Thereafter, the licensure fee for hospice facilities shall be established based on the costs associated with performing licensing activities for the specific facility category pursuant to HSC 1266. The licensure fees are collected annually and are based on the number of beds on the license. Fees amounts are updated annually on the CDPH website and can be accessed at:

<http://www.cdph.ca.gov/pubsforms/fiscalrep/Documents/LicCertFeeListing2013-01-01.pdf>

14. Can a CLHF(B) that has already paid its licensing fee, and converts to a hospice facility, have the licensing fee pro-rated for the remainder of the CLHF-B fee due date?

A: No. Licensing & Certification does not have the authority to pro-rate fees. In addition, in order for a CLHF to obtain a hospice facility license, they must file a new licensing application which requires submittal of a new licensure fee.