

## **FINDING OF EMERGENCY**

### **Emergency Regulations for Hospice Agencies (DPH-18-002E) November 18, 2025**

The Director of the California Department of Public Health (Department) finds that an emergency exists and that the proposed emergency regulations, as required by the Legislature, are necessary to address situations that call for immediate action to avoid serious harm to public peace, health, safety, and general welfare.

#### **NOTICE AND INTRODUCTION**

Notice is hereby given that the Department proposes to adopt the regulations described below. Government code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

#### **DEEMED EMERGENCY**

The Legislature provided the Department with express authority to adopt emergency regulations to implement the requirements of Health and Safety Code (HSC) section 1753.1 as established by Assembly Bill (AB) 2673 (Irwin, Chapter 797, Statutes of 2022). Given these requirements, the lack of existing regulations, and the scope of the proposed emergency regulations, the Department solicited and accepted written and verbal recommendations from the regulated community on four separate occasions in the last 31 months on the contents of the hospice regulations. Additionally, the proposed hospice emergency regulations were developed in coordination with the Department's consultants, surveyors, and subject matter experts.

AB 2673 also amended HSC section 1751.70 to establish a moratorium on new hospice agency licenses and mandating a deadline for the promulgation of emergency regulations. The initial end of the moratorium and the mandate for emergency regulations ended on the earlier of two years from the date that the California State Auditor published a report on hospice licensure or on the date emergency regulations are adopted. The report on hospice licensure was published on March 29, 2022.<sup>1</sup> Senate Bill 137 (Chapter 191, Statutes of 2023) extended the moratorium and the deadline for emergency regulations to January 1, 2025, and AB 177 (Chapter 999, Statutes of 2024) extended the moratorium and the deadline to January 1, 2026. The

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<sup>1</sup> "California Hospice Licensure and Oversight." *Auditor of the State of California Report 2021-23*, <https://information.auditor.ca.gov/pdfs/reports/2021-123.pdf> Last accessed 08/14/2025.

Auditor's report found that the State's weak controls have created the opportunity for large-scale fraud and abuse, and concluded that immediate action needs to be taken to ensure the health and safety of hospice patients and to address fraud and abuse taking place. If emergency regulations are not passed by January 1, 2026, hospice licenses will be issued without the regulatory requirements needed to protect the health and safety of hospice patients and to prevent the kinds of fraud and abuse identified in the Auditor's report.

The Department has carefully considered all recommendations from the regulated community and, where appropriate, incorporated said recommendations into the proposed regulations. As a result, the proposed emergency regulations are necessary to meet the January 1, 2026, implementation date of the requirements of HSC section 1753.1.

### **AUTHORITY AND REFERENCE**

Authority: Health and Safety Code sections 1275, 1753, 1753.1, 131000, 131050, 131051, and 131200, Health and Safety Code.

Reference: Health and Safety Code Sections 20, 1201, 1253.2, 1253.3, 1266.5, 1746, 1746.50, 1746.52, 1747, 1747.1, 1747.3, 1747.5, 1748, 1749, 1750, 1751.100, 1751.5, 1751.75, 1752, 1752.1, 1753, 1753.1, 1754, 1755, 1756, and 18004.5, Health and Safety Code.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

#### **Purpose and Objective**

The Department proposes to adopt emergency regulations to Title 22 of the California Code of Regulations (CCR) Division 5, Chapter 6.5 concerning hospice agencies as required by HSC section 1753.1. These proposed regulations will effectuate HSC section 1753.1 to implement industry standards, put processes in place to improve patient care, and combat Medicare and Medi-Cal fraud including the influx of fraudulent hospice agencies in California.

#### **Background**

HSC sections 1753 and 1753.1 grant the Department the authority to promulgate regulations for hospice agencies. Hospice regulations for licensing processes have not been promulgated to date. At this time, the only licensing requirements governing hospice agencies are the California Hospice Licensure Act of 1990 found in HSC Division 2 Chapter 8.5, and the California Hospice and Palliative Care Association (CHAPCA) Standards for Quality Hospice Care of 2003, as incorporated by reference in HSC section 1749(e). These requirements are not comprehensive enough to address all aspects of regulatory oversight. As a result, there has been an abundance of Medicare and Medi-Cal fraud occurring throughout the State of California as identified in the California State Auditor Report 2021-123 on California Hospice Licensure and

Oversight.<sup>2</sup> For example, the absence of standards concerning the number of hospice agencies that may operate within a geographical area or even at the same address has caused the proliferation of fraudulent agencies opening in metropolitan cities such as Los Angeles.

### Policy Statement Overview

#### *Problem Statement:*

There are currently no regulations concerning hospice agencies that have been promulgated by the Department. Adopting hospice agency emergency regulations per HSC section 1753.1 is necessary to implement, interpret, and make specific the enforceable requirements of the California Hospice Licensure Act of 1990 to protect the health and safety of patients and combat the widespread Medicare and Medi-Cal fraud occurring in California.

In the California State Auditor Report 2021-123 on California Hospice Licensure and Oversight, the California State Auditor found a litany of fraudulent activities, six of which the legislature has expressly mandated the Department resolve under emergency regulatory authority pursuant to HSC section 1753.1. Specifically, the auditor found that:

- Some hospice agencies employ management personnel who are responsible for managing more hospices than they can realistically oversee. In one instance, a hospice administrator was responsible for 27 different hospice agencies. Other hospice agencies were using the names and personal information of hospice management personnel who were not actually employed by the hospice.
- Multiple fraudulent hospice agencies were using the same business address, despite the fact that the building did not have the capacity for their operations or were highly concentrated in buildings next to each other. The same agencies also lacked signage or any indication that a hospice was operating there.
- Hospice agencies would move to new locations or sell their business without notifying the Department. In egregious instances some hospices would obtain licensure from the Department and sell their businesses as ‘*brand new, never billed*’ hospice agencies with the sole intent of never providing services to the public and seeking profit margins into the hundreds of thousands.
- Hospice agencies employed management personnel who had no prior experience, training, or education in hospice or palliative care which resulted in substandard care being provided to patients.
- Hospice agency service areas were often too large for the agencies to reasonably oversee their operations and provide care to patients when needed.

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<sup>2</sup> CA State Auditor, “*California Hospice Licensure and Oversight: The State’s Weak Oversight of Hospice Agencies Has Created Opportunities for Large-Scale Fraud and Abuse.*” March 29, 2022, Report Number 2021-123, <https://information.auditor.ca.gov/reports/2021-123/index.html>.

This resulted in long response times when patients or their families requested care.

- There was lack of standards for patient care which made it difficult to hold hospices accountable and ensure that they had enough nursing personnel to provide quality care.

*Objectives (Goals):*

The broad objectives of this regulatory proposal are:

- Promulgate new regulations to implement, interpret, and make specific the requirements of HSC section 1753.1 and to clarify what standards a licensed hospice will be required to comply with.
- Adopt application requirements that assist the Department in screening applicants for hospice licensure.
- Ensure that hospice services are needed in the geographic service area where the applicant is proposing to provide hospice services.
- Ensure that hospice employees are qualified to provide services to patients.
- Combat Medicare and Medi-Cal fraud in California.
- Protect the health and safety of patients cared for by hospice providers and personnel.
- Codify existing Department practices concerning hospice agencies.
- Align the Department's requirements and enforcement with applicable federal rules and industry standards.

Benefits:

Anticipated benefits from adopting hospice agency emergency regulations as proposed are:

- Improve patient care and safety.
- Provide acceptable standards of care.
- Provide clarity and uniformity to the regulated community.
- Improve the surveying process for the Department's surveyors.

**EFFECT OF REGULATORY ACTION**

This proposed action will add Title 22, Code of Federal Regulations, sections 74800, 74804, 74808, 74812, 74816, 74820, 74824, 74828, 74832, 74836, 74840, 74844, 74848, 74852, 74856, 74860, 74864, 74868, 74872, 74876, 74880, 74884, 74888, 74892, 74896, 74900, 74904, and 74908. These regulations comprise Division 5, Chapter 6.5, which includes 5 Articles, in Title 22 of the California Code of Regulations as follows:

Adopt Article 1. Definitions.

The proposed requirements found in Article 1 includes definitions for 59 terms used throughout Chapter 6.5 so the regulated community has a clear and formal meaning of commonly used words and phrases in the hospice regulation text.

Adopt Article 2. License.

The proposed requirements found in Article 2 provides a regulatory framework that hospice agencies must follow to obtain and maintain licensure which also align with the hospice audit recommendations to properly protect the health and safety of current and prospective hospice patients. Implementing these regulations will uphold the integrity of the licensure process and establish license application requirements to make clear what hospice agencies must submit to the Department. This article would also set general expectations for hospice inspections conducted by Department surveyors and specifies factors that lead to disciplinary sanctions carried out by the Department including denial of application, involuntary suspension, and revocation of license.

More importantly, this proposed article adopts requirements as outlined in HSC section 1753.1(a) by implementing a two-hour response time for hospice personnel to arrive for patient care, which must begin as soon as the hospice receives information that a patient needs care or that a safety concern exists. The proposed regulations will require hospices to submit a list of cities or counties it intends to serve as a proposed geographic service area (GSA) as part of its licensure application. Prior to approving an application for licensure, Department staff will verify that the counties listed in the applicant's proposed GSA are reachable within two hours. Any counties that are outside the two-hour response time requirement will not be approved as part of the hospice's service area without a separate licensure application being submitted. The proposed regulations will help eliminate instances where hospices are accepting patients for which they cannot provide timely care, thereby improving patient health, welfare, and safety.

This proposed article also addresses HSC section 1753.1(f) by imposing timeframes and application requirements for hospice agencies to adhere to when submitting applications for any substantive changes. These include, but are not limited to, reporting any changes in ownership, location, geographic service area, mailing address, hospice/licensee name, and management personnel. Article 2 also defines what constitutes as a change of ownership and establishes a 5-year moratorium on further ownership changes, ensuring that transactions are valid and comply with the law while helping deter fraud. Any hospice agencies that are found to be non-compliant with the report of change notification requirements and timelines will be at risk of denial for their request and may be subject to involuntary license suspension or revocation.

Adopt Article 3. Services.

The proposed requirements found in Article 3 would address HSC section 1753.1(b) by requiring that a licensed nurse must be assigned 12 or fewer patients at all times. In deriving this standard, the Department consulted with the regulated community and received significant support for this ratio from stakeholders. The proposed regulations will help to ensure patients receive quality care and will help protect the wellbeing of hospice nurses by avoiding "burn out" which can occur from being assigned high patient caseloads. This proposed article also addresses HSC section 1753.1(c) by stating that Directors of Patient Care Services, Medical Directors, and their respective designees

can only be responsible for the operation of one hospice agency, with an exception for management personnel operating in rural areas. Directors of Patient Care Services will be allowed to oversee two agencies in the same rural area and Medical Directors will be allowed to oversee up to three agencies in rural areas. These proposed regulations will ensure that management personnel are able to spend sufficient time overseeing a hospice agency, are able to perform the necessary duties, and can provide high quality care to patients. These proposed regulations will also deter deceptive individuals from obtaining and using stolen identities with the intent of opening a fraudulent hospice agency. Department staff will have the ability to check if the medical professionals listed on the application for licensure are already associated with another hospice agency and, if they are, the Department may request for the individual to be replaced or deny the application.

#### Adopt Article 4. Plan of Care.

The proposed requirements found in Article 4 are necessary to promulgate HSC section 1753.1 fully and effectively. These proposed regulations provide the manner in which hospices must certify and document proof of terminal illness of patients upon admission to a hospice, must fully assess the individual needs of hospice patients, and must determine and document an individualized plan of care for each patient that identifies what kind of care the patient will receive and at what frequency the care will be provided. These proposed regulations also require the plan of care to be reviewed and updated in meetings by the hospice interdisciplinary team to ensure adequate care is being provided to the patient. All updates and meetings must be documented so Department surveyors can verify that adequate care is currently being provided by the hospice and that they are assessing what that care should be on an ongoing basis. The hospice audit recommended the Department confirm that hospices are providing adequate care, so Department surveyors will be able to review all of the required plan of care documentation as identified above. Without telling hospices what specific information needs to be included in the plan of care documentation, Department surveyors would have uneven enforcement because there are currently no uniform standards to follow.

#### Adopt Article 5. Administration.

The proposed requirements found in Article 5 address HSC section 1753.1(c) by stating that hospice Administrators and their designees can only be responsible for the operation of one hospice agency, with an exception for Administrators or Administrator Designees operating in rural areas who would be allowed to oversee two agencies. These proposed regulations will ensure that management personnel are able to spend sufficient time overseeing a hospice agency, are able to perform the necessary duties, and can provide high quality care to patients. These proposed regulations, along with the similar limitations under Article 3, will also deter deceptive individuals from obtaining and using stolen identities with the intent of opening a fraudulent hospice agency. Department staff will have the ability to check if the medical professionals listed on the application for licensure are already associated with another hospice agency and, if they are, the Department may request for the individual to be replaced or deny the

application.

This proposed article also addresses HSC section 1753.1(d) by requiring all hospice management personnel to meet minimum standards of education and experience such as a bachelor's degree or completion of a certification program and at least two years of full-time managerial or supervisory experience in a health-related field. Management personnel will also be required to complete hospice specific orientation upon hire and annual continuing educational training every year thereafter. The proposed regulations adopt an industry standard to ensure that all newly hired management personnel are adequately qualified and properly trained to perform the duties required of their positions.

Furthermore, this proposed article addresses HSC section 1753.1(e) by requiring all hospice agencies to operate in an unshared commercial office space and provide proof of property ownership or an exclusive lease for a minimum of 12 consecutive months. The proposed regulations will also require permanent signage to be visibly posted for the public, an active business phone line, a website, and other standard business necessities.

The proposed requirements found in Article 5 would also provide the manner in which hospices must store and maintain patient medical records and personnel records, as well as how hospice agencies must address deficiencies cited by Department representatives which are necessary to fully promulgate HSC section 1753.1.

#### **STATEMENTS OF DETERMINATIONS AND ECONOMIC IMPACT ASSESSMENT**

The Department had extensive stakeholder engagements and felt there was significant consensus on the regulation as proposed. The Department has therefore determined that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the regulations are proposed, would be as effective and less burdensome to affected businesses and private persons than the proposed regulations, or would be more cost effective to affected businesses and private persons and equally effective in implementing the statutory policy or other provision of law. The proposed regulations include the topics mandated by the legislature to adopt emergency regulations under HSC section 1753.1 from recommendations found in the California State Auditor Report 2021-123 on the California Hospice Licensure and Oversight (March 29, 2022).

#### **EVALUATION AS TO WHETHER THE PROPOSED REGULATIONS ARE INCONSISTENT OR INCOMPATIBLE WITH EXISTING STATE REGULATIONS**

The Department has reviewed existing state and federal regulations and concluded that the proposed regulations are not incompatible with existing state or federal regulations.

#### **MANDATED BY FEDERAL LAW OR REGULATIONS**

The Department has made a determination that this proposal is not mandated

by federal law or regulations.

### **LOCAL MANDATE**

The Department has determined that this regulatory action would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by part 7 (commencing with Section 17500) of division 4 of the Government Code.

### **FISCAL IMPACT ASSESSMENT**

- A. Cost to Any Local Agency or School District: None
- B. Cost or Savings to Any State Agency: The Department has determined that the proposed regulations will affect two state-run hospice facilities. The Department estimates that the initial cost per hospice facility is \$5,098. The total costs of \$10,196 for both state-run hospice facilities are expected to be absorbed within existing budgets and resources.
- C. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None
- D. Cost or Savings in Federal Funding to the State: None

### **INCORPORATIONS BY REFERENCE**

- "Hospice Request for Certification in the Medicare Program," CMS-417 (11/24), published by the Centers for Medicaid and Medicare Services
- "Hospice Survey and Deficiencies Report," CMS-643 (06/08), published by the Centers for Medicaid and Medicare Services
- "Health Insurance Benefit Agreement," CMS-1561 (07/01), published by the Centers for Medicaid and Medicare Services
- "Medicare Enrollment Application," CMS-855A (09/23), published by the Centers for Medicaid and Medicare Services
- "Assurance of Compliance," HHS-690 (11/19), published by the United States Department of Health and Human Services
- "Notice Effective Date of Provider Agreement," HS-328 (9/17), published by the California Health and Human Services Agency
- "Medi-Cal Provider Agreement," DHCS 9098 (07/25), published by the California Department of Health Care Services

- “Medi-Cal Disclosure Statement,” DHCS 6207 (02/17), published by the California Department of Health Care Services

## **DOCUMENTS RELIED UPON**

1. “California Hospice Licensure and Oversight.” *Auditor of the State of California Report 2021-123*, <https://information.auditor.ca.gov/reports/2021-123/index.html>. Accessed 23 June 2025.
2. “Imminent Danger.” *Occupational Safety and Health Administration*, [www.osha.gov/workers/danger](http://www.osha.gov/workers/danger). Accessed 19 June 2025.
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7. *Insurance Clarification for Medi-Cal Provider Enrollment ...*, [www.dhcs.ca.gov/provgovpart/Documents/PAVE\\_Project\\_for\\_Provider\\_Enrollment\\_Division/INSURANCEREQUIREMENTCLARIFICATIONWFORM.pdf](http://www.dhcs.ca.gov/provgovpart/Documents/PAVE_Project_for_Provider_Enrollment_Division/INSURANCEREQUIREMENTCLARIFICATIONWFORM.pdf). Accessed 23 June 2025.
8. “N.Y. Comp. Codes R. & Regs. Tit. 10 § 790.16 - Determinations of Public Need for Hospice.” *Legal Information Institute*, Legal Information Institute, [www.law.cornell.edu/regulations/new-york/10-NYCRR-790.16#:~:text=10%20%C2%A7%20790.16%20%2D%20Determinations%20of%20public%20need%20for%20hospice,-State%20Regulations&text=\(a\)%20The%20following%20methodology%20will,for%20hospice%20care%20and%20services](http://www.law.cornell.edu/regulations/new-york/10-NYCRR-790.16#:~:text=10%20%C2%A7%20790.16%20%2D%20Determinations%20of%20public%20need%20for%20hospice,-State%20Regulations&text=(a)%20The%20following%20methodology%20will,for%20hospice%20care%20and%20services). Accessed 19 June 2025.
9. “Florida Administrative Code, Chapter 59C-1, Section 59C-1.0355 - Hospice Programs: Florida Administrative Code: Justia.” *Justia Law*,

- <https://regulations.justia.com/states/florida/59/59c/chapter-59c-1/section-59c-1-0355/>. Accessed 19 June 2025.
10. *Welcome - California Health and Human Services Open Data Portal*, <https://data.chhs.ca.gov/>. Accessed 19 June 2025.
  11. *Death Profiles by County - Dataset - California Health and Human Services Open Data Portal*, <https://data.chhs.ca.gov/dataset/death-profiles-by-county>. Accessed 19 June 2025.
  12. *NHPCO Facts and Figures - 2020 Edition*, <https://allianceforcareathome.org/wp-content/uploads/NHPCO-Facts-Figures-2020-edition.pdf>. Accessed 23 June 2025.
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23. "Mississippi Code 1972 (2024) :: Title 41 - Public Health (§§ 41-1-1 - 41-149-11) :: Chapter 85 - Mississippi Hospice Law of 1995 (§§ 41-85-1 - 41-85-25) :: Section 41-85-7 - Administration of Chapter; Powers and Duties of Administrator; Collection and Use of Fees; Suspension of Processing or Issuing Certain New Applications for Hospice Licensure." *Justia Law*, <https://law.justia.com/codes/mississippi/title-41/chapter-85/section-41-85-7/>. Accessed 19 June 2025.
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