

## Assembly Bill No. 1299

### CHAPTER 825

An act to amend Sections 1368.2, 1746, and 1749 of the Health and Safety Code, relating to health facilities.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1299, Daucher. Hospices.

The California Hospice Licensure Act of 1990 provides for the licensure of hospices by the State Department of Health Services in order to ensure the health and safety of patients experiencing the last phases of life due to the existence of a terminal disease, and to permit qualified persons, political subdivisions of the state, and governmental agencies to comply with requirements of federal law regarding the provision of hospice care.

Existing law requires every group health care service plan contract, except a specialized health care service plan contract, that is issued, amended, or renewed, to include a provision for hospice care. Existing law requires the hospice care to, at a minimum, be equivalent to hospice care provided by the federal Medicare program.

This bill would provide that the hospice care is not required to include preliminary services, as defined. However, the bill would require an enrollee who receives those preliminary services to remain eligible for coverage of curative treatment by a health care service plan during the course of preliminary services and prior to the election of hospice services.

This bill would authorize the provision of additional preliminary services, as defined, to persons who have not elected to become a hospice patient if those services are determined to be needed, and would make these additional services and related definitions inapplicable to group health care service plans.

Existing law requires licensed hospice services to comply with the "Standards for Quality Hospice Care, 1996" of the California State Hospice Association. Existing law makes violation of hospice licensure provisions a crime.

The bill would, instead, require licensed hospice services to comply with the "Standards for Quality Hospice Care, 2003" of the California Hospice and Palliative Care Association. By changing the definition of a crime, this bill 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.

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

SECTION 1. Section 1368.2 of the Health and Safety Code is amended to read:

1368.2. (a) On and after January 1, 2002, every group health care service plan contract, except a specialized health care service plan contract, which is issued, amended, or renewed, shall include a provision for hospice care.

(b) The hospice care shall at a minimum be equivalent to hospice care provided by the federal Medicare program pursuant to Title XVIII of the Social Security Act.

(c) The hospice care provided under this section is not required to include preliminary services set forth in subdivision (d) of Section 1749. However, an enrollee who receives those preliminary services shall remain eligible for coverage of curative treatment by a health care service plan during the course of preliminary services and prior to the election of hospice services.

(d) The following are applicable to this section and to paragraph (7) of subdivision (b) of Section 1345:

(1) The definitions in Section 1746, except for subdivisions (o) and (p) of that section.

(2) The “federal regulations” which means the regulations adopted for hospice care under Title XVIII of the Social Security Act in Title 42 of the Code of Federal Regulations, Chapter IV, Part 418, except Subparts A, B, G, and H, and any amendments or successor provisions thereto.

(e) The director no later than January 1, 2001, shall adopt regulations to implement this section. The regulations shall meet all of the following requirements:

(1) Be consistent with all material elements of the federal regulations that are not by their terms applicable only to eligible Medicare beneficiaries. If there is a conflict between a federal regulation and any state regulation, other than those adopted pursuant to this section, the director shall adopt the regulation that is most favorable for plan subscribers, members or enrollees to receive hospice care.

(2) Be consistent with any other applicable federal or state laws.



(3) Be consistent with the definitions of Section 1746, except for subdivisions (o) and (p) of that section.

(f) This section is not applicable to the subscribers, members, or enrollees of a health care service plan who elect to receive hospice care under the Medicare program.

(g) The director, commencing on January 15, 2002, and on each January 15th thereafter, shall report to the Advisory Committee on Managed Health Care any changes in the federal regulations that differ materially from the regulations then in effect for this section. The director shall include with the report written text for proposed changes to the regulations then in effect for this section needed to meet the requirements of subdivision (e).

SEC. 2. Section 1746 of the Health and Safety Code is amended to read:

1746. For the 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) “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.

(c) "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.

(d) "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.

(e) "An 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.

(f) "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.

(g) "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.



(h) “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.

(i) “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.

(j) “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.

(k) “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.

(l) “Home health aide” has the same meaning as set forth in subdivision (c) of Section 1727.

(m) “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.

(n) “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.

(o) “Palliative” refers to medical treatment, interdisciplinary care, or consultation provided to the patient or family members, or both, that have as its primary purposes 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.

(p) “Preliminary services” means those services authorized pursuant to subdivision (d) of Section 1749.

SEC. 3. Section 1749 of the Health and Safety Code is amended to read:



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

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

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

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

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

- (1) Skilled nursing services.
- (2) Social services/counseling services.
- (3) Medical direction.
- (4) Bereavement services.
- (5) Volunteer services.
- (6) Inpatient care arrangements.
- (7) Home health aide services.

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

(d) (1) Notwithstanding any provision of law to the contrary, to meet the unique needs of the community, licensed hospices may provide, in addition to hospice services authorized in this chapter, any of the following preliminary services for any person in need of those services, as determined by the physician and surgeon, if any, in charge of the care of a patient, or at the request of the patient or family:

- (A) Preliminary palliative care consultations.
- (B) Preliminary counseling and care planning.
- (C) Preliminary grief and bereavement services.

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



to subdivision (w) of Section 14132 of the Welfare and Institutions Code.

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

SEC. 4. 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.

