

87632 HOSPICE CARE WAIVER

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- (a) In order to accept or retain terminally ill residents and permit them to receive care from a hospice agency, the licensee shall have obtained a facility hospice care waiver from the Department. To obtain this waiver the licensee shall submit a written request for a waiver to the Department on behalf of any residents who may request retention, and any future residents who may request acceptance, along with the provision of hospice services in the facility. The request shall include, but not be limited to the following:
- (1) Specification of the maximum number of terminally ill residents which the facility wants to have at any one time.
 - (2) A statement by the licensee that they have read, Section 87633, Hospice Care for Terminally Ill Residents, this section, and all other requirements within Chapter 8 of Title 22 of the California Code of Regulations governing Residential Care Facilities for the Elderly and that they will comply with these requirements.
 - (3) A statement by the licensee that the terms and conditions of all hospice care plans which are designated as the responsibility of the licensee, or under the control of the licensee, shall be adhered to by the licensee.
 - (4) A statement by the licensee that an agreement with the hospice agency will be entered into regarding the care plan for the terminally ill resident to be accepted and/or retained in the facility. The agreement with hospice shall design and provide for the care, services, and necessary medical intervention related to the terminal illness as necessary to supplement the care and supervision provided by the licensee.
- (b) The Department shall deny a waiver request if the licensee is not in substantial compliance with the provisions of the Residential Care Facilities for the Elderly Act (Health and Safety Code Section 1569 et seq.) and the requirements of Chapter 8 of Title 22 of the California Code of Regulations governing Residential Care Facilities for the Elderly.
- (c) No waiver request will be approved unless the facility demonstrates the ability to meet the care and supervision needs of terminally ill residents, and states a willingness to provide additional care staff if required by the hospice care plan.
- (d) If the Department grants a hospice care waiver it shall stipulate terms and conditions of the waiver as necessary to ensure the well-being of terminally ill residents and of all other facility residents, which shall include, but not be limited to, the following requirements:
- (1) A written request shall be signed by each terminally ill resident or prospective resident upon admission, or by the resident's or prospective resident's health care surrogate decision maker to allow for his or her acceptance or retention in the facility while receiving hospice services.
 - (A) The request shall be maintained in the resident's record at the facility, as specified in Section 87633(h)(1).

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- (2) The licensee shall notify the Department in writing within five working days of the initiation of hospice care services for any terminally ill resident in the facility or within five working days of admitting a resident already receiving hospice care services. The notice shall include the resident's name and date of admission to the facility and the name and address of the hospice.
- (e) Within 30 days of receipt of an acceptable request for a hospice care waiver, the Department shall notify the applicant or licensee, in writing of one of the following:
 - (1) The request has been approved or denied.
 - (2) The request is deficient, describing additional information required for the request to be acceptable and a time frame for submitting this information.
 - (A) Failure of the applicant or licensee to comply within the time specified in (2) above shall result in denial of the request.

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Health and Safety Code section 1569.73 provided in relevant part:

- "(a)(2) The terminally ill resident, or the terminally ill person to be accepted as a resident, has obtained the services of a hospice certified in accordance with federal medicare conditions of participation and licensed pursuant to Chapter 8 (commencing with Section 1725) or Chapter 8.5 (commencing with Section 1745).
- (3) The facility, in the judgment of the department, has the ability to provide care and supervision appropriate to meet the needs of the terminally ill resident or the terminally ill person to be accepted as a resident, and is in substantial compliance with regulations governing the operation of residential care facilities for the elderly.
 - (4) The hospice has agreed to design and provide for care, services, and necessary medical intervention related to the terminal illness as necessary to supplement the care and supervision provided by the facility.
 - (5) An agreement has been executed between the facility and the hospice regarding the care plan for the terminally ill resident or terminally ill person to be accepted as a resident. The care plan shall designate the primary caregiver, identify other caregivers, and outline the tasks the facility is responsible for performing and the approximate frequency with which they shall be performed. The care plan shall specifically limit the facility's role for care and supervision to those tasks allowed under this chapter...

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- (d) Nothing in this section is intended to expand the scope of care and supervision for a residential care facility for the elderly as defined in this act, nor shall a facility be required to alter or extend its license in order to retain a terminally ill resident or allow a terminally ill person to become a resident of the facility as authorized by this section.
- (e) Nothing in this section shall require any care or supervision to be provided by the residential care facility for the elderly beyond that which is permitted in this chapter...
- (g) The department shall not be responsible for the evaluation of medical services provided to the resident by the hospice and shall have no liability for the independent acts of the hospice..."

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NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.1, 1569.2, 1569.10, 1569.11, 1569.15, 1569.31, 1569.312, 1569.54 and 1569.73, Health and Safety Code.

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- (a) The licensee shall be permitted to accept or retain residents who have been diagnosed as terminally ill by his or her physician and surgeon and who may or may not have restrictive and/or prohibited health conditions, to reside in the facility and receive hospice services from a hospice agency in the facility, when all of the following conditions are met:
 - (1) The licensee has received a hospice care waiver from the department.
 - (2) The licensee remains in substantial compliance with the requirements of this section, with the provisions of the Residential Care Facilities for the Elderly Act (Health and Safety Code Section 1569 et seq.), all other requirements of Chapter 8 of Title 22 of the California Code of Regulations governing Residential Care Facilities for the Elderly, and with all terms and conditions of the waiver.
 - (3) Hospice agency services are contracted for by each terminally ill resident or prospective resident individually, or the resident's or prospective resident's Health Care Surrogate Decision Maker if the resident or prospective resident is incapacitated, not by the licensee on behalf of a resident or prospective resident. These hospice agency services must be provided by a hospice agency both licensed by the state and certified by the federal Medicare program.

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- (4) A written hospice care plan which specifies the care, services, and necessary medical intervention related to the terminal illness as necessary to supplement the care and supervision provided by the facility is developed for each terminally ill resident or prospective resident by that resident's hospice agency, and agreed to by the licensee and the resident, or prospective resident, or the resident's or prospective resident's Health Care Surrogate Decision Maker, if any, prior to the initiation of hospice services in the facility for that resident, and all hospice care plans are fully implemented by the licensee and by the hospice(s).
 - (5) The acceptance or retention of any terminally ill resident or prospective resident in the facility does not represent a threat to the health and safety of any facility resident, or result in a violation of the personal rights of any facility resident.
 - (6) The hospice agency and the resident or prospective resident agree to provide the licensee with all information necessary to allow the licensee to comply with all regulations and to assure that the resident's or prospective resident's needs will be met.
- (b) A current and complete hospice care plan shall be maintained in the facility for each hospice resident and include the following:
- (1) The name, office address, business telephone number, and 24-hour emergency telephone number of the hospice agency and the resident's physician.
 - (2) A description of the services to be provided in the facility by the hospice agency including but not limited to the type and frequency of services to be provided.
 - (3) Designation of the resident's primary contact person at the hospice agency, and resident's primary and alternate care giver at the facility.
 - (4) A description of the area of licensee's responsibility for implementing the plan including, but not limited to, facility staff duties; record keeping; and communication with the hospice agency, resident's physician, and the resident's responsible person(s), if any. This description shall include the type and frequency of the tasks to be performed by the facility.
 - (A) The plan shall specify all procedures to be implemented by the licensee regarding the storage and handling of medications or other substances, and the maintenance and use of medical supplies, equipment, or appliances.
 - (B) The plan shall specify, by name or job function, the licensed health care professional on the hospice agency staff who will control and supervise the storage and administration of all controlled drugs (Schedule II - V) for the hospice client. Facility staff can assist hospice residents with self-medications without hospice personnel being present.

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- (C) The plan shall neither require nor recommend that the licensee or any facility personnel other than a physician or appropriately skilled professional implement any health care procedure which may legally be provided only by a physician or appropriately skilled professional.
- (5) A description of all hospice services to be provided or arranged in the facility by persons other than the licensee, facility personnel, or the hospice agency including, but not limited to, clergy and the resident's family members and friends.
- (6) Identification of the training needed, which staff members need this training, and who will provide the training relating to the licensee's responsibilities for implementation of the hospice care plan.
 - (A) The training shall include but not be limited to typical needs of hospice patients, such as turning and incontinence care to prevent skin breakdown, hydration, and infection control.
 - (B) The hospice agency will provide training specific to the current and ongoing needs of the individual resident receiving hospice care and that training must be completed before hospice care to the resident begins.
- (7) Any other information deemed necessary by the Department to ensure that the terminally ill resident's needs for health care, personal care, and supervision are met.
- (c) The licensee shall ensure that the hospice care plan complies with the requirements of this section, with the provisions of the Residential Care Facilities for the Elderly Act (Health and Safety Code Section 1569 et seq.), and all other requirements of Chapter 8 of Title 22 of the California Code of Regulations governing Residential Care Facilities for the Elderly.
- (d) The licensee shall ensure that the hospice care plan is current, accurately matches the services actually being provided, and that the client's care needs are being met at all times.
- (e) The Department may require that the licensee obtain a revision of the hospice care plan if the plan is not fully implemented, or if the Department has determined that revision of the plan is necessary to protect the health and safety of any facility resident.
- (f) The licensee shall maintain a record of all hospice-related training provided to the licensee or facility personnel for a period of three years. This record shall be available for review by the Department.
 - (1) The record of each training session shall specify the names and credentials of the trainer, the persons in attendance, the subject matter covered, and the date and duration of the training session.

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- (g) In addition to the reporting requirements specified in Section 87211, Reporting Requirements, the licensee shall submit a report to the Department when a terminally ill resident's hospice services are interrupted or discontinued for any reason other than the death of the resident, including refusal of hospice care or discharge from hospice. The licensee shall also report any deviation from the resident's hospice care plan, or other incident, which threatens the health and safety of any resident.
- (1) Such reports shall be made by telephone within one working day, and in writing within five working days, and shall specify all of the following:
- (A) The name, age, sex of each affected resident.
 - (B) The date and nature of the event and explanatory background information leading up to the event.
 - (C) The name and business telephone number of the hospice agency.
 - (D) Actions taken by the licensee and any other parties to resolve the reportable event and to prevent similar occurrences in the future.
- (h) For each terminally ill resident receiving hospice services in the facility, the licensee shall maintain the following in the resident's record:
- (1) A written request for acceptance or admittance to or retention in the facility while receiving hospice services, along with any advance directive and/or request regarding resuscitative measures form executed by the resident or (in certain instances) the resident's Health Care Surrogate Decision Maker.
 - (2) The name, address, telephone number, and 24-hour emergency telephone number of the hospice agency and the resident's Health Care Surrogate Decision Maker, if any, in a manner that is readily available to the resident, the licensee, and facility staff.
 - (3) A copy of the written certification statement of the resident's terminal illness from the medical director of the hospice or the physician member of the hospice interdisciplinary group and the individual's attending physician, if the individual has an attending physician.
 - (4) A copy of the resident's current hospice care plan approved by the licensee, the hospice agency, and the resident, or the resident's Health Care Surrogate Decision Maker if the resident is incapacitated.

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- (5) A statement signed by the resident's roommate, if any, or any resident who will share a room with a person who is terminally ill to be accepted or retained as a resident, indicating his or her acknowledgment that the resident intends to receive hospice care in the facility for the remainder of the resident's life, and the roommate's voluntary agreement to grant access to the shared living space to hospice caregivers, and the resident's support network of family members, friends, clergy, and others.
 - (A) If the roommate withdraws the agreement verbally or in writing, the licensee shall make alternative arrangements which fully meet the needs of the hospice resident.
- (i) Prescription medications no longer needed shall be disposed of in accordance with Section 87465(i).
- (j) A written health condition exception request and approval from the Department in accordance with Section 87616, is not needed for any restricted health conditions listed in Section 87612, Restricted Health Conditions, or for any prohibited health conditions listed in Section 87615, Prohibited Health Conditions, provided the resident or prospective resident has been diagnosed as terminally ill and is currently receiving hospice care in compliance with Section 87633, Hospice Care for Terminally Ill Residents, and the treatment of the restricted and/or prohibited health conditions is addressed in the hospice care plan.
 - (1) In caring for a resident's health condition, facility staff, other than appropriately skilled health professionals, shall not perform any health care procedure that under law may only be performed by an appropriately skilled professional.
- (k) The licensee shall maintain a record of dosages of medications that are centrally stored for each resident receiving hospice services in the facility.
- (l) Residents receiving hospice care or prospective residents already receiving hospice care when accepted as residents who are bedridden may reside in the facility provided the facility meets the requirements of Section 87606, Care of Bedridden Residents.

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Health and Safety Code section 1569.73(h) provides in summary:

"Nothing in this section [which deals with terminally ill residents and hospice care] shall be construed to relieve a licensed residential care facility for the elderly of its responsibility to notify the appropriate fire authority of the presence of a bedridden resident in the facility as required under subdivision (f) of Section 1569.72 and to obtain and maintain a fire clearance as required under Section 1569.149."

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- (m) Nothing contained in this section or in Chapter 8 precludes the Department from requiring the relocation of a terminally ill resident whose needs for personal care and supervision or health care are not being met in the facility.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.1, 1569.2, 1569.31, 1569.312, 1569.54, 1569.72, and 1569.73, Health and Safety Code.

- (a) If a resident has a health condition which cannot be cared for within the limits of the license, requires inpatient care in a health facility, or has a health condition prohibited by Section 87455(c) or Section 87615, Prohibited Health Conditions, the Department shall order the licensee to relocate the resident.
- (b) When the Department orders the relocation of a resident, the following shall apply:
- (1) The Department shall give written notice to the licensee ordering the relocation of the resident and informing the licensee of the resident's right to an interdisciplinary team review of the relocation order as specified in Section 87638, Resident Request for Review of Health Condition Relocation Order. Notice of the health condition relocation order and information about the right to request an interdisciplinary team review of the relocation order shall be given to the resident, by the Department, and sent to the resident's responsible person, if any.