

SUPPLEMENTAL STATEMENT OF REASONS

The California Department of Social Services (CDSS) has instituted additional changes to these proposed regulations which are discussed below.

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Handbook Section 87455

Specific Purpose:

This handbook section is being amended to correct a typographical error.

Factual Basis:

This amendment is necessary for clarity and consistency by correcting a typographical error.

Section 87469

Specific Purpose:

This regulation title is being amended to correct the title that was incorrect in the original 45-day notice and replace existing regulation title with “Advance Directives and Requests Regarding Resuscitative Measures.”

Factual Basis:

This amendment is necessary for clarity and consistency by correcting the section title that was incorrect in the original 45-day notice and then re-titling section to read "Advance Directives and Requests Regarding Resuscitative Measures." The existing title is very specific and does not speak to all available options for residents when making decisions about their medical care. The broader reference to "Advance Directives and Requests Regarding Resuscitative Measures" allows for all legally permissible documents to be used by residents to make decisions about their medical care.

Section 87469(a)

Specific Purpose:

This regulation is being amended to correct a typographical error and correct the reference to the publication date for the Publication 325.

Factual Basis:

This amendment is necessary for clarity and consistency by correcting a typographical error (incorrect inclusion of the date "1/04") and an incorrect revision date for Publication 325 in the initial 45-day notice period.

Sections 87469(c), (c)(1) and (c)(2)

Specific Purpose:

These regulations are being amended to correct an error in the original proposed text. The underlined text did not properly reflect the existing text in the CCRs. The regulation text that was incorrect in the original 45-day notice and replace reference to "Request to Forego Resuscitative Measures, an Advance Health Care Directive and/or a Do-Not-Resuscitate" with "advance directive and/or request regarding resuscitative measures."

Factual Basis:

This amendment is necessary for clarity and consistency by correcting regulation text that was inaccurate in the original 45-day notice and then amending regulations to more broadly reference advance directives and requests regarding resuscitative measures. The existing text is very specific and does not speak to all available options for residents when making decisions about their medical care. The broader reference to "advance directive and request regarding resuscitative measures" allows for all legally permissible documents to be used by residents to make decisions about their medical care.

Section 87469(d)

Specific Purpose:

This regulation is being amended to correct regulation text that was incorrect in the original 45-day notice.

Factual Basis:

This amendment is necessary for clarity and consistency by correcting regulation text that was inaccurate in the original 45-day notice period. The noticed regulations inadvertently deleted "hospice agency and" and capitalized "Health Care Surrogate Decision Maker" without proper underline and strikeout formatting.

Handbook Section 87469

Specific Purpose/Factual Basis:

This Handbook reference has been added for the purpose of clarity, consistency and ease of access by the Licensing Program Analyst (LPA), responsible for enforcement in the

Community Care Licensing Division (CCLD), to the referenced Probate Code section 4780 in Section 87469(d). This statute was amended as a result of Assembly Bill (AB) 3000 (2008). Providing statute in the regulation as "Handbook" material is at the discretion and formatting preference/style of CDSS. Handbook material is for ease of use of reference material and is not "cited" by the LPA staff within the CCLD for enforcement purposes.

Section 87615

Specific Purpose

This regulation section title is being amended to correct a typographical error.

Factual Basis:

This amendment is necessary for clarity and consistency by correcting a typographical error that was included in the original 45-day notice period, as the noticed section title was missing a letter.

Section 87615(a)

Specific Purpose:

This regulation is being amended to correct regulation text that was incorrect in the original 45-day notice and provide justification for the deletion of the cross reference to Section 87455(c).

Factual Basis:

This amendment is necessary for clarity and consistency by correcting text that was incorrect in the original 45-day notice, deleting reference to "the following" and providing the necessity for striking out the cross reference to Section 87455(c). Sections 87615(a)(1)-(6) provide a list of prohibited health conditions. Deleting "the following" clarifies that it is the conditions that are prohibited, not a list of "persons" prohibited. In addition, the cross-reference to Section 87455(c) was deleted to segregate regulatory prohibited health conditions, which under specified circumstances CDSS can waive, with statutory prohibitions which CDSS has no authority to waive.

Section 87632(a)

Specific Purpose:

This regulation is amended to correct typographical errors.

Factual Basis:

This amendment is necessary for clarity and consistency by correcting regulation text that was incorrect in the original 45-day notice and then correcting two typographical errors. The stricken out and underlined text was incorrect in the initial 45-day notice period, as the noticed regulations included typographical errors that were corrected without proper underline and strikeout formatting.

Section 87632(a)(4)

Specific Purpose:

This regulation is amended to clarify the regulation added prior to the initial 45-day notice period.

Factual Basis:

This amendment is necessary for clarity and consistency by rephrasing the regulation to be consistent with Sections 87632(a)(1)-(3), clarifying what the licensee is required to submit to CDSS when applying for a hospice care waiver, including a statement by the licensee that they will enter into an agreement with the hospice agency regarding the care plan, as specified. The care plan is specific to the terminally ill resident or prospective resident and hospice agency and cannot be entered into until the resident or prospective resident has decided to obtain hospice services. The substantive portion of this regulation text was added prior to the initial 45-day notice period for clarity and consistency with Health and Safety (H&S) Code section 1569.73(a)(5), which requires the facility to enter into an agreement with the hospice agency regarding the hospice care plan for the terminally ill resident or terminally ill person to be accepted as a resident. In addition, in the Initial Statement of Reasons, a statement related to this regulation was incorrect and is being deleted from the record for clarity. The incorrect statement was "This amendment is consistent with the provisions set forth in H&S Code section 1569.73 regarding the execution of a written agreement for the hospice care waiver." Further, the wording of the amendment was corrected to more accurately reflect the intent and language of H&S Code section 1569.73(a)(4). Although this proposed regulation is duplicative of or overlaps H&S Code section 1569.73(a)(4), said duplication or overlap is necessary to satisfy the "clarity" standard of Government Code section 11349.1(a)(3) by further emphasizing to the user of the regulation the statutory requirement for the hospice to delineate its responsibilities in providing medical intervention related to the terminal illness in its agreement with the facility.

Section 87632(f)

Specific Purpose:

This regulation is being repealed.

Factual Basis:

This amendment is necessary for clarity and consistency by deleting Section 87632(f) which is a general statement regarding liability, while the rest of Section 87632 includes procedural items related to the hospice care waiver application process. In addition, this concept is similarly restated in H&S Code section 1569.73(g), which is provided by reference through Handbook in this section.

Section 87633(h)(1)

Specific Purpose:

This regulation is being amended to correct regulation text that was incorrect in the original 45-day notice and replace reference to "Advance Health Care Directive, Request to Forego Resuscitative Measures, and/or Do-Not-Resuscitate Form " with "an advance directive and/or request regarding resuscitative measures."

Factual Basis:

This amendment is necessary for clarity and consistency by correcting regulation text that was inaccurate in the original 45-day notice and then amending the regulation to more broadly reference advance directive and/or requests regarding resuscitative measures. The existing text is very specific and does not speak to all available options for residents when making decisions about their medical care. The broader reference to "advance directive and/or request regarding resuscitative measures" allows for all legally permissible documents to be used by residents to make decisions about their medical care.

b) Identification of Documents Upon Which Department Is Relying

AB 1961 (Canciamilla), Chapter 109, Statutes of 2002

AB 1166 (Berg), Chapter 312, Statutes of 2003

c) Local Mandate Statement

Local Mandate Statement is included in the Initial Statement of Reasons.

d) Statement of Alternatives Considered

Statement of Alternatives Considered is included in the Initial Statement of Reasons.

e) Statement of Significant Adverse Economic Impact On Business

The CDSS does not collect data on the number of individuals receiving hospice care in licensed facilities or the number of calls made to emergency response services. In addition, the changes reflected in these regulations codify statutes that have been in effect since 2002

and 2003 respectively. Since that time, CDSS has not received any facts, evidence, documents, testimony or other evidence to indicate there has been any significant adverse impact on business related to these laws. As such, CDSS has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Economic Impact Assessment

The changes reflected in these regulations codify statutes that have been in effect since 2002 and 2003 respectively. While the regulations allow for the acceptance and remittance of residents receiving hospice, as specified, in practice statute already allowed for this for many years. As such, CDSS has determined that the adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California. These regulations benefit the health and welfare of California residents by clarifying in regulation that they have a choice in where to live while receiving hospice services, improving the state environment. These regulations have no direct impact on worker safety.

The following documents were relied upon in proposing the regulatory action:

AB 1961 (Canciamilla), Chapter 109, Statutes of 2002

AB 1166 (Berg), Chapter 312, Statutes of 2003

g) Benefits Anticipated from Regulatory Action

Benefits Anticipated from Regulatory Action are included in the Initial Statement of Reasons.

h) Statement of Specific Technology or Equipment

Statement of Specific Technology or Equipment is included in the Initial Statement of Reasons.

i) Testimony and Response

Testimony and Response from the 45-day public comment period is included in the Final Statement of Reasons. The following comment was received during the 15-day public comment period from January 29, 2015 to 5:00 p.m. February 13, 2015:

1. Section 87632(a)(4)

Comment:

CALA recommends amending this section to read, "A statement by the licensee that an agreement with the hospice agency will be entered into regarding outlining the care, services, and medical intervention to be provided by the hospice agency, and those provided by the licensee within the scope of the RCFE license."

Response:

The Department appreciates this comment and suggested language, but is not amending the regulation at this time. Additional time is warranted to give proper consideration of the full implication of your comments on reducing redundancy and more directly explaining the function of the agreement between the licensee and hospice agency.