

NOTICE PUBLICATION/REGULATIONS SUBMISSION

REGULAR

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2014-0210-06	REGULATORY ACTION NUMBER 2014-1002-045	EMERGENCY NUMBER
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ENDORSED FILED THE OFFICE OF

2014 NOV 10 PM 1:43

Debra Bowen
DEBRA BOWEN
SECRETARY OF STATE

For use by Office of Administrative Law (OAL) only

2014 OCT -2 PM 3:25
OFFICE OF ADMINISTRATIVE LAW

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY California Department of Social Services	AGENCY FILE NUMBER (if any) ORD # 0713-08
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER 2014 82	PUBLICATION DATE 2/21/2014

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Hospice Terminally Ill, Adult Residential Facility	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
TITLE(S) 22, MPP	AMEND Sections 85001, 85075.1, 85075.2, 85075.3
	REPEAL

11/7/2014 per agency request *[Signature]*

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Zaid Dominguez	TELEPHONE NUMBER (916) 651-8267	FAX NUMBER (Optional) (916) 654-3286	E-MAIL ADDRESS (Optional) zaid.dominguez@dss.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

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ENDORSED APPROVED

NOV 10 2014

Office of Administrative Law

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Pat Leary</i>	DATE 9/19/14
TYPED NAME AND TITLE OF SIGNATORY Pat Leary, Chief Deputy Director	

Amend Section 85001 to Read:

85001 **DEFINITIONS** (Continued)

85001

(f) (Continued)

- (1) "Facility Hospice Care Waiver" means a waiver, as required by Health and Safety Code section 1507.3, from the limitation on acceptance or retention of clients who have been diagnosed as terminally ill, if that person has obtained the services of a hospice agency certified in accordance with federal Medicare conditions of participation and licensure as defined ~~require more care and supervision than ordinarily would be permitted in an Adult Residential Facility, and clients who are bedridden other than for a temporary illness.~~ This waiver granted by the Department will permit the licensee to accept or retain a designated maximum number of terminally ill clients who are receiving services from a Hospice Agency. The waiver will apply only to those existing or prospective clients who are receiving hospice care in compliance with a Hospice Care Plan meeting the requirements of Section 85075.1.

(Continued)

Authority cited: Sections 1530 and 1562.3(i), Health and Safety Code.

Reference: Sections 1501, 1502.2, 1507, 1507.3, 4530, 1531, and 1562.3, Health and Safety Code, and Section 15610.13, Welfare and Institutions Code, and Sections 1800, 4605, and 4753, Probate Code.

Amend Section 85075.1 to Read:

85075.1 HOSPICE CARE

- (a) A licensee shall be permitted to retain terminally ill clients who receive hospice services from a hospice agency or to accept terminally ill persons as clients if they are already receiving hospice services from a hospice agency and would continue to receive those services without disruption after becoming a client, if when all of the following conditions (1) through (7) are met:
- (1) (Continued)
 - (2) (Continued)
 - (3) Hospice services are individually contracted for by each ~~terminally ill~~ client who is terminally ill individually or, if the client is incapacitated, by ~~the client's~~ his or her Health Care Surrogate Decision Maker. The licensee shall not contract for hospice services on behalf of an existing or prospective client. The hospice agency must be licensed by the state and certified by the federal Medicare program to provide hospice services.
 - (4) A written hospice care plan is developed for each existing or prospective terminally ill client by that client's hospice agency. Prior to the initiation of hospice services in the facility for that client, the plan must be agreed upon by the licensee and the client, or the client's Health Care Surrogate Decision Maker, if any. A written request to allow his or her acceptance or retention in the facility while receiving hospice services shall be signed by each existing or prospective client or the existing Health Care Surrogate Decision Maker, if any, and maintained by the licensee in the client's record. All plans must be fully implemented by the licensee and by the hospice agency.

HANDBOOK BEGINS HERE

Health and Safety Code section 1507.3(a) provides in part that:

- (4) The hospice agency 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 agency regarding the care plan for the terminally ill resident, or the 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 authorized for a residential facility under this chapter.

HANDBOOK ENDS HERE

- (5) The acceptance or retention of any terminally ill client in the facility does not represent a threat to the health and safety of any other facility client or violate results in a violation of the personal rights of any other facility client.
- (6) (Continued)
- (b) (Continued)
- (6) (Continued)
- (B) The hospice agency will provide training to all staff providing care to terminally ill clients that have obtained hospice services. This training shall be specific to the current and ongoing needs of the individual client receiving hospice care. The training must be completed before hospice care to the for a client begins in the facility.
- (7) (Continued)
- (h) For each client receiving hospice services, the licensee shall maintain the following in the client's record:
- (1) The client's or the client's Health Care Surrogate Decision Maker's written request for acceptance or retention and hospice services in the facility while receiving hospice services, and his/her ~~Advance Health Care Directive~~ advance directive or request regarding resuscitative measures, if any.
- (2) (Continued)

- (1) Clients receiving hospice care, who are bedridden as defined in Section ~~1569.72(b)~~ 1566.45 of the Health and Safety Code may reside in the facility provided ~~that the licensee shall~~ within 48 hours of the client's admission or retention in the facility, ~~notify the individual's bedridden status, the licensee ensures that the local fire authority having jurisdiction over the bedridden client's location is notified of the estimated length of time the client will retain his or her bedridden status in the facility be bedridden.~~

HANDBOOK BEGINS HERE

Health and Safety Code section ~~1569.72(b)~~ 1566.45 (e) provides:

"(e) Notwithstanding the length of stay of a bedridden client, every residential facility admitting or retaining a bedridden client shall, within 48 hours of the client's admission or retention in the facility, notify the fire authority having jurisdiction over the bedridden client's location of the estimated length of time the client will retain his or her bedridden status in the facility."

~~(1) For purposes of this section, "bedridden" means either requiring assistance in turning and repositioning in bed, or being unable to independently transfer to and from bed, except in facilities with appropriate and sufficient care staff, mechanical devices if necessary, and safety precautions, as determined by the director in regulations.~~

~~(2) The determination of the bedridden status of persons with developmental disabilities shall be made by the Director of Social Services or his or her designated representative, in consultation with the Director of Developmental Services or his or her designated representative, after consulting the resident's individual safety plan. The determination of the bedridden status of all other persons with disabilities who are not developmentally disabled shall be made by the Director of Social Services or his or her designated representative.~~

HANDBOOK ENDS HERE

(m) Despite prohibitions to the contrary in Section 80091, clients who have or develop any condition or care requirements relating to naso-gastric and naso-duodenal tubes and Stage 3 and 4 dermal ulcers may be permitted to be accepted or retained in the facility, provided these clients have been diagnosed as terminally ill and are receiving hospice services in accordance with a hospice care plan required in this section and the treatment of such prohibited health conditions is specifically addressed in the hospice care plan. Clients with active, communicable tuberculosis, or any condition or care requirements which would require the facility to be licensed as a health facility as defined by Section 1202 and Section 1250 of the Health and Safety Code remain prohibited from being accepted or retained in the facility.

(n) Clients receiving hospice who also have or develop any restricted health conditions listed in Section 80092, Restricted Health Conditions, may be admitted or retained in the facility without the licensee's requirement to develop and maintain a written Restricted Health Condition Care Plan in accordance with Section 80092.2, provided these clients have been diagnosed as terminally ill and are receiving hospice services in accordance with a hospice care plan required in this section and the treatment of such restricted health conditions is specifically addressed in the hospice care plan.

~~(m)~~(o) Nothing contained in this section precludes the Department from requiring a client to be relocated when the client's need for care and supervision or health care are not being met in the facility.

Authority cited: Section 1530, Health and Safety Code.

Reference: Sections 1507.3 and ~~1569.72(b)~~, 1566.45, Health and Safety Code.

Amend Section 85075.2 to Read:

85075.2 FACILITY HOSPICE CARE WAIVER

85075.2

- (a) In order to ~~accept or~~ retain terminally ill clients and permit them to receive care from hospice, the ~~licensee~~ licensee shall have ~~obtained~~ requested in writing and been granted a Facility Hospice Care Waiver from the Department. ~~To obtain this waiver~~ The licensee's ~~shall submit a written request~~ shall includeing, but not be limited to, the following:
- (1) (Continued)
 - (2) (Continued)
 - (3) (Continued)
 - (4) A statement that additional care staff will be provided if required by the hospice care plan. ~~hospice services will be provided only to individuals who are clients of the facility prior to the initiation of hospice services.~~
- (b) (Continued)
- (c) The Department shall not approve a waiver request unless the licensee: ~~1) demonstrates the ability to meet the care and supervision needs of clients, and 2) states a willingness to provide additional care staff if required by the plan.~~ 1) demonstrates the ability to meet the care and supervision needs of clients, and 2) states a willingness to provide additional care staff if required by the plan.
- (d) Any waiver granted by the Department shall include terms and conditions necessary to ensure the well-being of clients receiving hospice care and/or all other clients. These terms and conditions shall include, but not be limited to, the following requirements:
- (1) A written request shall be signed by each client or the client's Health Care Surrogate Decision Maker, if any, to allow ~~the client's~~ his or her acceptance or retention in the facility while receiving hospice services.
 - (A) (Continued)
 - (2) The licensee shall notify the Department in writing within five working days of the initiation of hospice care services ~~in the facility~~ for any terminally ill client. The notice shall include the client's name and date of admission to the facility and the name and address of the hospice agency.
- (e) Within 30 calendar days of receipt of a completed request for a waiver, the Department shall notify the applicant or licensee, in writing, of one of the following:
- (1) The request ~~with substantiating evidence~~ has been ~~received and accepted for consideration~~ approved or denied.

- (2) The request is deficient, needing additional described information for the request to be acceptable, and a time frame for submitting this information.
- (A) Failure of the applicant or licensee to submit the requested ~~informaiton~~ information within the time shall result in denial of the request.
- ~~(3) Within 30 days of accepting a request for a waiver, the licensing agency shall notify the applicant or licensee, in writing, whether the request has been approved or denied.~~

Authority cited: Section 1530, Health and Safety Code.

Reference: Section 1507.3, Health and Safety Code.

- (3) The facility has documented that facility staff have received training from the hospice agency on the expected course of the resident's illness and the symptoms of impending death."

HANDBOOK ENDS HERE

Authority cited: Section 1530, Health and Safety Code.

Reference: Sections 1501, ~~and~~ 1507, and 1507.3, Health and Safety Code, and Section 4605, Probate Code.