

INITIAL STATEMENT OF REASONS

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

Section 87455(b)(8)

Specific Purpose:

This regulation is added to accept and retain persons who have been diagnosed as terminally ill and who have obtained the services of a hospice certified in accordance with federal Medicare conditions of participation and licensure as defined in Health and Safety (H&S) Code section 1569.73.

Factual Basis:

This addition is necessary for clarity and consistency with H&S Code section 1569.73(a), which was added to statute by Assembly Bill (AB) 1961 (Canciamilla), Chapter 109, Statutes of 2002. AB 1961 amended H&S Code section 1569.73(a) to permit a Residential Care Facility for the Elderly (RCFE) to accept as a new resident, a terminally ill person who is already receiving hospice services, if certain conditions are met. Previously, RCFEs were only permitted to retain a resident who becomes terminally ill and initiates hospice services while a resident of the facility. This statutory change increases the care options for terminally ill persons who are receiving hospice services and are otherwise eligible for admittance to a RCFE. This revision is also necessary for clarity and consistency with H&S Code section 1569.73(a) requiring the hospice care waiver provisions specifically for terminally ill individuals to be accepted or retained in a RCFE, and for establishing the statutory authority for the waiver.

Handbook 87455(d)

Specific Purpose/Factual Basis

This Handbook reference has been added for the purpose of clarity, consistency and ease of access by the Licensed Program Analyst (LPA), responsible for enforcement in the Community Care Licensing Division (CCLD), to the referenced H&S Code section 1569.73(a) in Section 87455(b)(8). This statute was added as a result of AB 1961 (2002). Providing statute in the regulation as “Handbook” material is at the discretion and formatting preference/style of the California Department of Social Services (CDSS). Handbook material is for the ease of reference material and is not “cited” by LPA staff within the CCLD for enforcement purposes.

Section 87465(g)

Specific Purpose:

This regulation is amended to establish the option to contact the resident's hospice agency to honor advance directives and/or requests regarding resuscitate measures in lieu of calling 9-1-1 in the event of a life threatening emergency when specified conditions are met.

Factual Basis:

This amendment is necessary for clarity and consistency with H&S Code section 1569.73(c), which added new sub-sections and language to statute based on AB 1166 (Berg), Chapter 312, Statutes of 2003. AB 1166 H&S Code section 1569.73(c) now allows a RCFE to contact the hospice agency to honor advance directives and/or requests regarding resuscitative measures in lieu of calling 9-1-1 under specified conditions. The facility has the option to not call emergency response 9-1-1 specifically for terminally ill residents on hospice experiencing a life-threatening emergency directly related to his or her terminal illness when they have an advance directive or request regarding resuscitative measures form on file. Previously, only emergency medical personnel or licensed professionals who were present at the time of the life-threatening emergency were allowed to honor advance directives and/or requests regarding resuscitative measures.

Section 87469(a)

Specific Purpose/Factual Basis:

This regulation is amended for clarity and consistency to reflect the editorial changes made (3/12) to the Publication 325 by removing the name of the previous Governor (Arnold Schwarzenegger) and Agency Secretary (S. Kimberly Belshé). Publication 325 will show only the generic State Seal, Agency and Department names, i.e., State of California, Health and Human Services Agency and the CDSS, rather than naming individuals. This will avoid the need to update regulations in the future when there are no other substantive and/or material changes being made to the Publication.

Section 87469(c)(3)

Specific Purpose:

This regulation is adopted for clarity and consistency in procedure providing the facility the option to not call emergency response 9-1-1 specifically for terminally ill residents on hospice experiencing a life-threatening emergency that is directly related to his or her terminal illness and they have an advance directive and/or request regarding resuscitative measures form on file.

Factual Basis:

This adoption is necessary for clarity and consistency with H&S Code section 1569.73(c) to allow RCFEs to contact the hospice agency to honor advance directives and/or requests regarding resuscitative measures in lieu of calling 9-1-1 under specified conditions, specifically for terminally ill residents experiencing a life-threatening emergency related to their terminal illness and who have elected to forego resuscitation. Please also see the “Factual Basis” under Section 87465(g).

Section 87469(c)(4) renumbered from Section 87469(c)(3)

Specific Purpose/Factual Basis:

This regulation is numbered from Section 87469(c)(3) to Section 87469(c)(4) for clarity in chronology, since the adopted subsection (c)(3) references H&S Code section 1569.73, and the renumbered subsection (c)(4) references H&S Code section 1569.74.

Section 87469(d)

Specific Purpose:

This regulation is amended to incorporate the newly adopted procedure in honoring advance directives and/or requests regarding resuscitative measures to subsequently notify the hospice agency and the Health Care Surrogate Decision Maker, if applicable. This regulation clarifies that the subsequent notification to the hospice agency may not always be applicable.

Factual Basis:

This amendment is necessary for clarity and consistency with updated regulations in Title 22, CCR section 87469(c) requiring notification to the resident’s hospice agency and health care surrogate decision maker after emergency medical personnel or healthcare professionals are called to honor advance directives and/or requests regarding resuscitative measures. Previously, hospice agencies were not allowed to be contacted to honor advance directives and/or requests regarding resuscitative measures. With the provisions of H&S Code section 1569.73(c) allowing hospice agencies to honor advance directives and/or requests regarding resuscitative measures, regulations will reflect only the need to subsequently notify the Health Care Surrogate Decision Maker, if applicable.

Handbook Section 87469(d)

Specific Purpose/Factual Basis:

These Handbook references have been added for the purpose of clarity, consistency and ease of access by the LPAs responsible for enforcement in the CCLD, to the referenced H&S Code sections 1569.73(c) and 1569.74 in Section 87469. These statutes were added as a

result of AB 1961 (2002) and AB 1166 (2003). Providing statute in the regulation as “Handbook” material is at the discretion and formatting preference/style of CDSS. Handbook material is for the ease of reference material and is not “cited” by the LPA staff within CCLD for enforcement purposes.

Section 87615(a)

Specific Purpose:

This regulation is amended to clarify in regulation that no person shall be accepted or retained in a RCFE if the resident has any prohibited health care requirement identified in Section 87455(c), Acceptance and Retention Limitations.

Factual Basis:

This amendment is necessary for clarity and consistency regarding acceptance and retention limitations that no resident shall be retained if the resident has active communicable tuberculosis, requires 24-hour, skilled nursing or intermediate care as specified in H&S Code sections 1569.72(a) and (a)(1), or if the resident’s primary need for care and supervision results from either an ongoing behavior, caused by a mental disorder or Dementia, unless the requirement of Section 87705, Care of Persons with Dementia, are met.

Section 87616(c)

Specific Purpose:

This regulation is added for clarity and consistency regarding facilities that have been granted a hospice care waiver to remove the need to separately request an individual exception for terminally ill residents who are receiving hospice and may have or will have a restrictive and/or prohibited health care condition.

Factual Basis:

This addition is necessary for clarity and consistency with H&S Code section 1569.73 to remove the duplication of workload and resources in complying with the “written exception” process specifically for terminally ill or prospective terminally ill persons who are receiving hospice care in facilities that have already satisfied the requirements of Section 87632, Hospice Care Waiver. Restrictive and/or prohibited health conditions may be and/or are summarily included for individuals receiving hospice in accordance with federal Medicare conditions of participation and licensure as defined in H&S Code section 1569.73(a)(2), (a)(3) and (a)(4). A written exception is not required for terminally ill residents or a prospective terminally ill resident who have obtained the services of a certified hospice.

Handbook Section 87616(c)

Specific Purpose/Factual Basis

This Handbook reference has been added for the purpose of clarity, consistency and ease of access by the Licensed Program Analyst (LPA), responsible for enforcement in the Community Care Licensing Division (CCLD), to the referenced H&S Code section 1569.73(a) in Section 87616(c). This statute was added as a result of AB 1961 (2002). Providing statute in the regulation as “Handbook” material is at the discretion and formatting preference/style of the CDSS. Handbook material is for the ease of reference material and is not “cited” by LPA staff within the CCLD for enforcement purposes.

Section 87632(a)

Specific Purpose:

This regulation is amended to include the requirements for acceptance of residents who are terminally ill and have obtained the services of hospice if 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.

Factual Basis:

This amended regulation is necessary for clarity and consistency with H&S Code section 1569.73(a), which allows facilities to request a waiver on behalf of terminally ill persons receiving hospice care services before they are admitted to a RCFE. This amendment is also necessary to make consistent regulatory requirements for the acceptance of residents who are terminally ill and receiving hospice care, with existing regulatory requirements for the retention of residents who are terminally ill and receiving hospice care.

Section 87632(a)(4)

Specific Purpose:

This regulation is amended to remove the residency requirement for prospective terminally ill residents already receiving hospice care prior to their acceptance in the facility and initiation of hospice services being provided. 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.

Factual Basis:

The amendment of a residency requirement in a RCFE prior to obtaining hospice care services are necessary for clarity and consistency with H&S Code section 1569.73, which does not exclude terminally ill individuals who are already receiving hospice care services from being admitted to a RCFE. This amendment is necessary and makes consistent

regulations requirements for prospective residents who are terminally ill and already receiving hospice care with those who are existing residents with regard to the licensee's written statement requirement and the provision of hospice services.

Section 87632(a)(5)

Specific Purpose:

This regulation is added for clarity and consistency in establishing the requirement of facilities to enter into an agreement with the hospice agency regarding the care plan designed to meet the care, services and necessary medical intervention related to the terminally ill person accepted or retained in the RCFE facility, as defined in H&S Code section 1569.73 and in Title 22, section 87632, Hospice Care Waiver.

Factual Basis:

This addition to the regulations is required for clarity and consistency with H&S Code section 1569.73(a)(5), which requires the facility to enter into an agreement with the hospice agency regarding the care, services and necessary medical interventions designed in the care plan to meet the needs of the terminally ill person. Furthermore, 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 of care and supervision to those tasks allowed under this Chapter.

Section 87632(d)(1)

Specific Purpose:

This regulation is amended to include a written request signed by the resident or prospective resident or the resident or prospective resident's Health Care Surrogate Decision Maker, if any, to allow for the acceptance or retention of the terminally ill resident in the facility while he or she is receiving hospice services.

Factual Basis:

This amendment is necessary for clarity and consistency with H&S Code section 1569.73(a)(5), which requires the written signature by the terminally ill or prospective terminally ill resident or his or her Health Care Surrogate Decision Maker, if any, to allow for the acceptance or retention of the terminally ill resident in the facility while receiving hospice services.

Section 87632(d)(2)

Specific Purpose:

This regulation is amended to require within five working days a written notification to the Department of the name and address of the hospice agency when hospice services have been initiated for residents accepted and/or retained in the facility.

Factual Basis:

This amendment is necessary for clarity and consistency with H&S Code section 1569.73, which allows RCFE facilities to accept or retain individuals receiving hospice care services and requires the licensee to notify the Department within five working days of the initiation of hospice services and the name and address of the hospice agency.

Section 87632(e) and 87632(e)(1)

Specific Purpose:

This regulation is amended to correct a typographical error and to delete “substantiating evidence” as a requirement. Section 87632(e) indicates the Department will notify the applicant or licensee of approval or denial within 30 days of receipt of an “acceptable” request.

Factual Basis:

This amendment is necessary for clarity and removes the “substantiating evidence” requirement. The Department will notify the applicant or licensee within 30 days of receipt of a request for a hospice care waiver. When the applicant or licensee is notified of approval or denial of the waiver request, it is implicit that the information provided by the applicant or licensee is “acceptable” by virtue of the Department’s rendering of a decision. Additionally, the “acceptable” documents needed are described in Section 87632(a)(1)-(4).

Section 87632(e)(3)

Specific Purpose/Factual Basis:

This regulation is repealed to remove duplicative notification requirements previously identified in Section 87632(e).

Section 87632(f)

Specific Purpose

This regulation is added to clarify the Department’s responsibility regarding the evaluation of services provided to the terminally ill resident who has entered into an agreement for

hospice care services while in the RCFE facility. In accordance with H&S Code section 1569.73, the Department is not responsible for the evaluation of medical services provided to the terminally ill resident under the hospice care plan and the Department shall have no liability for the independent acts of the hospice.

Factual Basis:

This regulation is added for clarity and consistency with H&S Code section 1569.73(g), which specifies that the Department shall not be responsible for the evaluation of the medical services provided to the terminally ill resident by the hospice and that the Department shall have no liability for the independent acts of the hospice.

Handbook Section 87632(f)

Specific Purpose/Factual Basis:

This handbook reference has been added for the purpose of clarity, consistency and ease of access by the LPA responsible for enforcement in CCLD to the referenced H&S Code section 1569.73(g) and in Section 87632(f). This statute was added as a result of AB 1166 (2003). Providing statute in the regulation as “Handbook” material is at the discretion and formatting preference/style of CDSS. Handbook information is for the ease of reference material and is not “cited” by the LPA staff within CCLD for enforcement purposes.

Section 87633(a)

Specific Purpose:

This regulation is amended to specify that terminally ill persons who are already receiving hospice care services are allowed to be admitted to a RCFE facility. This regulation is also amended to allow a hospice care waiver to include residents who may or may not have a restrictive and/or prohibited health condition if a hospice agreement has been executed between the facility and the hospice agency, whereby, the hospice has agreed to design and provide for care, services and necessary medical intervention related to the terminal illness as necessary to meet the needs of the terminally ill resident as set forth in Section 87616, Exceptions for Health Conditions.

Factual Basis:

This amendment is necessary to comply with H&S Code section 1569.73(a), which permits a RCFE to accept a resident who is terminally ill and who is already receiving hospice services, if certain conditions are met. Additionally, the Department has the authority as referenced in Section 87616, Exceptions for Health Conditions, and as specified in Section 87209, Program Flexibility, to “not require” a written exception for terminally ill residents who may or may not have a restrictive and/or prohibited health condition if the licensee believes the intent of the law can be met through alternative means.

Section 87633(a)(3)

Specific Purpose:

This regulation is amended to include “prospective residents” in the requirement to contract for hospice services individually or require the prospective resident’s Health Care Surrogate Decision Maker, if any, to contract for hospice services on behalf of the prospective resident, not by the licensee on behalf of the resident or prospective resident. Hospice agency services must be provided by a hospice agency licensed by the state and certified by the federal Medicare program.

Factual Basis:

This amendment is necessary for clarity and consistency to make regulation consistent for existing and/or prospective terminally ill residents receiving hospice services in the requirement to individually contract for hospice services or their Health Care Surrogate Decision Maker, if any, on their behalf.

Section 87633(a)(4)

Specific Purpose:

This regulation is amended to include the requirement to have a written hospice care plan developed for each terminally ill resident or prospective terminally ill resident, prior to the initiation of hospice services or for the continuation of those hospice services, as agreed to by the hospice, the licensee, the resident and/or prospective resident or their Health Care Surrogate Decision maker, if any.

Factual Basis:

This amendment is necessary for clarity and consistency with H&S Code section 1569.73(a) to make regulatory requirements consistent for prospective residents who are terminally ill and receiving hospice care services with regulatory requirements for existing residents who are terminally ill and receiving hospice care services. Specifically, this regulatory requirement pertains to the written hospice care plan developed for each terminally ill resident or prospective resident by the hospice agency and agreed to by the licensee and the resident or prospective resident prior to the initiation or continuation of hospice services.

Section 87633(a)(5)

Specific Purpose:

This regulation is amended to make consistent health and safety protections and personal rights requirements for existing residents or prospective residents who are terminally ill and receiving hospice care services.

Factual Basis:

This amendment is necessary for clarity and consistency with H&S Code section 1569.73(a), which permits a RCFE to accept a resident who has been diagnosed as terminally ill and who is already receiving hospice services if certain conditions are met. This amendment is also necessary to make consistent regulatory requirements regarding health and safety and the personal rights for existing or prospective residents who are terminally ill and receiving hospice care services.

Section 87633(a)(6)

Specific Purpose:

This regulation is amended to apply to accepted and prospective residents who are diagnosed as terminally ill and receiving hospice care services, requiring the hospice agency and the resident to provide the licensee with all information necessary to allow the licensee to comply with all regulations and assure that the residents' needs will be met.

Factual Basis:

This amendment is necessary for clarity and consistency with H&S Code section 1569.73(a), which permits a RCFE to accept a resident or prospective resident who is diagnosed as terminally ill and who is already receiving hospice services if certain conditions are met. This amendment is also necessary to make regulatory requirements consistent for accepted and prospective residents who are terminally ill and receiving hospice. In this case, these regulatory requirements pertain to the hospice agency and the resident providing all necessary information to the licensee to comply with all regulations, and assure the needs will be met for the terminally ill residents or prospective terminally ill residents.

Section 87633(h)(1)

Specific Purpose:

This regulation is amended to specify the requirement for a written request for acceptance or retention in the facility while receiving hospice services, along with any advance directives and/or requests regarding resuscitative measures executed by the resident or prospective resident or Health Care Surrogate Decision Maker, if any.

Factual Basis:

This amendment is necessary for clarity and consistency with existing regulations governing the requirement for a written request for acceptance or retention when receiving hospice services while in a RCFE facility, along with any advance directives and/or requests regarding resuscitative measures executed.

Sections 87633(h)(5)

Specific Purpose:

This regulation is amended to add protections for the rights of existing residents in requiring the resident's written agreement to share a room with a person who is terminally ill or a prospective resident who is terminally ill, receiving hospice services upon being admitted or retained into the facility. The existing resident as a roommate voluntarily agrees to grant access to the shared living space to hospice caregivers, network of family members, friends, clergy and others.

Factual Basis:

This amendment is necessary to comply with H&S Code section 1569.73(a)(6) to protect the rights of existing residents who will share a room with a person who is accepted or retained in the facility and who is terminally ill receiving or intends to receive hospice care services. This voluntary agreement extends to granting access of the living space to the hospice caregivers, network of family members, friends, clergy and others.

Section 87633(j)

Specific Purpose:

This regulation is amended to remove the requirement of the "exception" process and/or obtaining the Department's approval for admitting or retaining terminally ill residents or prospective terminally ill residents who may or may not have restrictive and/or prohibited health conditions and who are receiving hospice care, provided the restrictive and/or prohibited health conditions are addressed in the hospice care plan under the Hospice Care Waiver.

Factual Basis:

This amendment in regulation is necessary for clarity and consistency in complying with H&S Code section 1569.73, as it applies to the acceptance and retention of residents or prospective residents who are terminally ill and receiving hospice care services in the facility. The Department's approval of an exception is not required for restrictive and/or prohibited health conditions once a Hospice Care Waiver has been granted and the restrictive and/or prohibited health conditions are addressed in the hospice care plan.

Section 87633(l)

Specific Purpose:

This regulation is amended to include prospective residents accepted by the facility who are terminally ill receiving hospice and may be or may become bedridden.

Factual Basis:

This amendment is necessary for clarity and consistency with H&S Code section 1569.73(a), which permits a RCFE to accept, if certain conditions are met, terminally ill or prospective terminally ill residents receiving hospice care that may be bedridden or may become bedridden. This amended regulation is also necessary for clarity and consistency with H&S Code section 1569.73(h), which requires the licensee to obtain a fire clearance for the safety of all bedridden residents and to make consistent regulatory requirements for existing and prospective residents who are terminally ill, receiving hospice and may be or may become bedridden.

Handbook Section 87633(l)

Specific Purpose/Factual Basis:

This Handbook reference has been added for the purpose of clarity, consistency and ease of access by the LPA responsible for enforcement within CCLD to the referenced H&S Code section 1569.73(h) in Section 87633(l). This statute was added as a result of AB 1166 (2003). Providing statute in the regulation as “Handbook” material is at the discretion and formatting preference/style of CDSS. Handbook information is for the ease of reference material and is not “cited” by the LPA staff within CCLD for enforcement purposes.

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

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in this order that require reimbursement under the laws of California.

d) Statement of Alternatives Considered

These regulations are developed in response to legislation, AB 1961 (Chapter 109, Statutes of 2002) and AB 1166 (Chapter 312, Statutes of 2003), which amended Section 1569.73 of

the H&S Code to allow the acceptance of terminally ill persons already receiving hospice care into a RCFE and to allow RCFEs to contact the hospice agency in lieu of calling emergency responders 9-1-1 under specified conditions.

The CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law.

e) Statement of Significant Adverse Economic Impact On Business

The CDSS has made an initial determination 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 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.

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

Adoption of these regulations will permit the acceptance of terminally ill individuals already receiving hospice care services into a RCFE, and will provide the option for RCFE licensees to notify a terminally ill resident's hospice agency in lieu of calling an emergency response unit 9-1-1 during a life threatening emergency directly related to the terminal illness for residents with advance directives and/or requests regarding resuscitative measures. These regulations acknowledge the relationship between the individual and the hospice agency when the individual is actively dying and has elected not to be resuscitated, hence the election of a Do-Not-Resuscitate order. These regulations provide consistency with the RCFE Act in the area of hospice requirements and are consistent with the findings of the Supreme Court decision *Olmstead V. L.C. (1999)* to allow individuals to stay in the least restrictive environment while providing consumer choice.

h) Statement of Specific Technology or Equipment

This regulatory action will not mandate the use of new, specific technologies or equipment.