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**GAVIN NEWSOM**  
*Governor*

November 29, 2022

AFL 22-28

**TO:** Hospice Agencies

**SUBJECT:** Assembly Bill (AB) 2673 – Expansion of Hospice Agency Licensure Requirements, Oversight, and Enforcement

**AUTHORITY:** Health and Safety Code (HSC) Division 2, Chapter 8.5 (commencing with Section 1745)

### **All Facilities Letter (AFL) Summary**

This AFL notifies hospice agencies of the chaptering of AB 2673 (Chapter 797, Statutes of 2022) that does all of the following:

- Extends the moratorium on new hospice licensure until the California Department of Public Health (CDPH) adopts emergency regulations for hospice agencies, but no later than March 29, 2024
- Requires a hospice agency license applicant to demonstrate unmet need of hospice services in the proposed service area, with exceptions for change of ownership (CHOW) applicants who meet certain criteria
- Specifies mandatory management personnel and requires currently licensed hospice agencies to submit information by March 31, 2023, at initial application, and any time there is a change of management personnel
- Prohibits CDPH from approving a CHOW of a licensed hospice agency within five years of the date a license was initially issued to the licensee, with exceptions for certain extenuating circumstances
- Establishes a complaint process for licensed hospice agencies
- Expands grounds for denial, suspension, or revocation of a license
- Requires CDPH to conduct validation surveys on five percent of hospice agencies that attained licensure via accreditation in the previous year

## **Moratorium Extension**

Effective January 1, 2023, the current moratorium on new hospice agency licenses under HSC Article 2.3 established by Senate Bill (SB) 664 (Chapter 494, Statutes of 2021) is extended until CDPH develops emergency regulations, but no later than March 29, 2024. CDPH must adopt emergency regulations no later than January 1, 2024. Hospice facilities are exempt from this moratorium.

For more detailed information concerning the moratorium, please refer to AFL 21-53: Senate Bill (SB) 664 - Hospice Licensure: Moratorium on New Licenses.

## Unmet Need

AB 2673 requires hospice agency applicants to prove unmet need of hospice services in their geographic service area to be eligible for licensure. CDPH may make an exception for a CHOW that will allow for continuing service provision by a hospice agency that has either previously met or can demonstrate it is currently meeting the geographic need requirement.

## Management Personnel

AB 2673 requires a hospice agency to have:

- an administrator,
- an administrator designee,
- a director of patient care services (DPCS),
- a DPCS designee, **and**
- a medical director or contracted medical director

For each of these individuals, a hospice agency must submit to CDPH:

- a form HS 215A (or successor form),
- a resumé, **and**
- a list of all hospice agencies that the individual is currently serving as management personnel

Additionally, the hospice agency must submit information on whether its medical director, or contracted medical director, is certified as a hospice medical director according to the requirements established by the Hospice Medical Director Certification Board, or certified in hospice and palliative medicine according to the requirements established by a member board of the American Board of Medical Specialties, or by the American Osteopathic Association, or an equivalent organization. The information submitted must include:

- the type of certification,
- the name of the certifying entity,
- the certificate number or a copy of the certificate, **and**
- the individual's board identification number, if applicable

The hospice agency must submit all the above information to CDPH as part of the initial hospice application, within 10 business days of a change in management personnel, and currently licensed hospice agencies on a one-time basis **no later than March 31, 2023**. CDPH must use this information to verify professional licensure status of these individuals and may verify their association with the hospice agency or their work history. Verification may include contacting hospice agency personnel or previous employers.

Hospice agencies must submit the required documentation for management personnel by mail to:

California Department of Public Health

Licensing and Certification Program

Centralized Applications Branch

P.O. Box 997377, MS 3207

## **Five-Year Prohibition on CHOWs**

AB 2673 reiterates existing law that a hospice agency license is not transferable. The bill prohibits CDPH from approving a CHOW of a licensed hospice agency within five years of the date a license was initially issued to the licensee, permitting only the licensee to use that license during the five-year period. CDPH may make an exception for extenuating circumstances if the hospice agency proves to CDPH either (1) a need to ensure continuity of care for existing patients, or (2) both a financial hardship and an unmet need of hospice services in its geographic service area.

## **CHOW Applications Received Prior to January 1, 2023**

Until January 1, 2023, CDPH will continue to review hospice agency CHOW applications under the current process in the order they are received. Applicants submitting a hospice agency CHOW application prior to January 1, 2023, should refer to AFL 21-53 and CDPH's hospice agency CHOW application webpage for detailed instructions on the current process.

CDPH must cease processing CHOW applications that do not meet the five-year licensing requirement that have not been issued a license as of December 31, 2022. Applications pending as of January 1, 2023, will be subject to the five-year prohibition on CHOWs unless an exception is granted by CDPH.

CDPH will send a letter to applicants with pending CHOW applications as of January 1, 2023, asking that they either indicate their intent to withdraw their CHOW application or indicate that they intend to move forward with their CHOW application under the new process. For applicants seeking to withdraw their application, CDPH will process and issue fee refunds to those applicants that previously submitted CHOW application fees. If an applicant decides to continue with the application process, the application will be subject to the licensing fee that will not be refunded even if the CHOW application is ultimately denied.

CDPH will automatically withdraw the application if the applicant does not submit notification of intent to withdraw or their intent to continue with the CHOW process by January 31, 2023. For automatically withdrawn applications, any CHOW application fees submitted will not be refunded.

## **Emergency Regulations**

AB 2673 requires CDPH to adopt emergency regulations by January 1, 2024, to implement recommendations in the California State Auditor Report 2021-123 California Hospice Licensure and Oversight (March 29, 2022). Emergency regulations must:

- Establish standards for the maximum time and distance staff may travel to reach patients that consider typical traffic conditions and rural or urban service areas
- Establish standards for a hospice agency's ratio of nurses to patients
- Limit the number of hospice agencies that management personnel can be involved with concurrently
- Require management personnel to meet minimum standards of training and experience, including but not limited to hospice-specific training or experience
- Establish hospice agency office space requirements
- Establish timelines for reporting changes, including but not limited to change of mailing address, change of location, and change of name

## Complaints and Investigations

Although current law permits CDPH to survey licensed hospices to investigate complaints, it does not establish a complaint process. AB 2673 codifies a hospice agency complaint process that permits any person to request an investigation of a hospice agency by making a complaint to CDPH, orally or in writing, alleging a violation of state statute or regulation. CDPH must then do all of the following:

- Provide the substance of the complaint to the licensee no earlier than at the time of investigation
- Prevent the substance of the complaint or any other record made available to the licensee from disclosing the name of any person mentioned in the complaint, except for the name of any CDPH representative conducting the investigation, unless the complainant specifically requests otherwise
- Make a preliminary review of a complaint upon its receipt
- Conduct an onsite investigation within 10 business days of receipt, unless the complaint is willfully intended to harass a licensee or without any reasonable basis or the visit would adversely affect the licensing investigation or the investigation of other agencies, and promptly inform the complainant of CDPH's proposed course of action in either case
- Make a good faith effort that is documented in writing to contact and interview the complainant prior to conducting an onsite investigation, and inform them of CDPH's proposed course of action and deadline to complete the investigation
- Have the representative who will conduct the complaint investigation also be the individual who contacts and interviews the complainant, to the extent practicable
- Notify the complainant in writing of the determination of the investigation within 10 business days of its completion

## Denials, Suspensions and Revocations of Hospice Licensure

AB 2673 expands the grounds for possible denial, suspension, or revocation of a hospice agency license to also include:

- Improperly certifying a patient as eligible for hospice care
- Prior termination from Medicare or Medi-Cal for noncompliance, or licensure suspension or revocation, of a hospice agency owned, operated, or managed by the applicant or licensee
- Demonstration of a pattern and practice of violations of state or federal standards during the last three years of a hospice agency owned, operated, or managed by the applicant or licensee
- Presence of the applicant or licensee on the List of Excluded Individuals/Entities of the US Department of Health and Human Services Office of Inspector General
- Failure by hospice agency management personnel to cooperate with CDPH for purposes of conducting an inspection or complaint investigation
- Failure to report a change in owner, management personnel, service area, or location

## Validation Surveys

AB 2673 requires CDPH to survey a selective sample of five percent of hospice agencies that attained initial licensure via accreditation by an accrediting organization during the previous calendar year. CDPH must conduct these validation surveys to ensure accreditation requirements are met and to determine compliance with licensing requirements that are more stringent than accreditation requirements.

For questions concerning a hospice agency application or the moratorium, please email CDPH's Center for Health Care Quality (CHCQ), Centralized Applications Branch (CAB) at [CABHospice@cdph.ca.gov](mailto:CABHospice@cdph.ca.gov).

For questions concerning emergency regulations, please email CHCQ's Regulation Development Section at [CHCQRegulations@cdph.ca.gov](mailto:CHCQRegulations@cdph.ca.gov).

For questions concerning complaints and investigations or validation surveys and all other questions, please contact your respective district office.

CDPH's failure to expressly notify facilities of statutory or regulatory requirements does not relieve facilities of their responsibility for following all laws and regulations. Facilities should refer to the full text of all applicable sections of HSC and the California Code of Regulations to ensure compliance.

Sincerely,

**Original signed by Cassie Dunham**

Cassie Dunham

Deputy Director

Resources:

- AFL 21-53 Senate Bill (SB) 664 - Hospice Licensure: Moratorium on New Licenses
- California State Auditor Report 2021-123 California Hospice Licensure and Oversight

Center for Health Care Quality, MS 0512 . P.O. Box 997377 . Sacramento, CA  
95899-7377

(916) 324-6630 . (916) 324-4820 FAX

Department Website ([cdph.ca.gov](http://cdph.ca.gov))

