

INITIAL STATEMENT OF REASONS

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

Section 85001 (f)(1)

Specific Purpose:

This regulation is amended to revise the definition of a “Facility Hospice Care Waiver” to incorporate the acceptance, under specified conditions, of new clients into Adult Residential Facilities (ARFs) who are already receiving hospice services from a hospice agency. This regulation also is amended to delete language that is inconsistent with statute, Health and Safety (H&S) Code section 1507.3(a).

Factual Basis:

This amendment is necessary for clarity and consistency with H&S Code section 1507.3(a), which was amended by Assembly Bill (AB) 1166 (Berg), Chapter 312, Statutes of 2003. AB 1166 amended H&S Code section 1507.3(a) to permit an ARF to accept as a new client a terminally ill person who is already receiving hospice services if certain conditions are met. Previously, ARFs were only permitted to retain a client who became terminally ill and initiated hospice services while in 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 an ARF. This revision is also necessary for clarity and consistency with H&S Code section 1507.3(a), which establishes the requirement for the hospice care waiver to include terminally ill individuals retained or accepted into an ARF.

Section 85075.1(a)

Specific Purpose:

This regulation is amended to specify that terminally ill persons who are already receiving hospice care services prior to acceptance, are allowed to be admitted into an ARF and continue to receive those services without disruption after becoming a client.

Factual Basis:

This amendment is necessary for clarity and consistency to comply with H&S Code section 1507.3, which permits an ARF to accept as a new client, a terminally ill person who is already receiving hospice services if certain conditions are met. Please also see the “Factual Basis” under Section 85001(f)(1).

Section 85075.1 (a)(3)

Specific Purpose:

This regulation is amended to include existing and prospective clients who are terminally ill and have individually contracted for hospice services or, if incapacitated, by his or her Health Care Surrogate Decision Maker.

Factual Basis:

This amended regulation is necessary for clarity and consistency with H&S Code section 1507.3(a), which permits an ARF to accept as a new client a terminally ill person who is already receiving hospice services, if certain conditions are met. This amendment also is necessary to make regulatory requirements for prospective clients who are terminally ill, consistent with existing regulatory requirements for those clients who are terminally ill and receiving hospice services. In this case, these regulatory requirements pertain to contracting individually for hospice services or if the client is incapacitated, by his or her Health Care Surrogate Decision Maker. Please also see the “Factual Basis” under Section 85001(f)(1).

Section 85075.1(a)(4)

Specific Purpose:

This regulation is amended to also include both existing and prospective clients who are terminally ill and receiving hospice care. A written request to allow for the client’s acceptance or retention in the facility while receiving hospice services, shall be signed by each existing or prospective client or his or her Health Care Surrogate Decision Maker, if any.

Factual Basis:

This amended regulation is necessary for clarity and consistency with H&S Code section 1507.3(a), which permits an ARF to accept as a new client a terminally ill person who is already receiving hospice services, if certain conditions are met. This amendment also is necessary to make regulatory requirements for prospective clients consistent with regulatory requirements for existing clients who are terminally ill. In this case, these regulations pertain to the requirements for a written hospice care plan, signed by the client or the Health Care Surrogate Decision Maker, if any. Please also see the “Factual Basis” under Section 85001(f)(1).

Handbook Section 85075.1(a)(4)

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) and the staffs' responsibility for the enforcement of the Community Care Licensing Division (CCLD) regulations in the ARFs. This H&S Code section 1507.3(a) referenced in Section 85075.1(a)(4) is added as a result of AB 1166 (2003) and as "Handbook" material at the discretion and formatting preference/style of the California Department of Social Services (CDSS). Handbook material is for the ease of access to reference material and is not "cited" by LPA staff within CCLD for enforcement purposes.

Section 85075.1(a)(5)

Specific Purpose:

This regulation is amended to include all clients who are terminally ill. Specifically, this regulation provides for the acceptance or retention of clients who are terminally ill and do not represent a threat to the health and safety of any other client in the facility, or violate the personal rights of any other client.

Factual Basis:

This amendment is necessary for clarity and consistency with H&S Code section 1507.3(a), which permits an ARF to accept as a new client, a terminally ill person who is already receiving hospice services if certain conditions are met. This amendment also is necessary to make consistent regulatory requirements for existing and prospective clients, who are terminally ill. In this case, these regulatory requirements pertain to the protection of the health and safety of all clients and the personal rights of all clients. Please also see the "Factual Basis" under Section 85001(f)(1).

Section 85075.1(a)(6)

Specific Purpose:

This regulation is amended to include existing and prospective clients who are terminally ill, to ensure their needs are met and ensure that the hospice and client agree to provide the licensee with all necessary information to allow the licensee to comply with all regulations.

Factual Basis:

This amended regulation is necessary for clarity and consistency with H&S Code section 1507.3(a), to ensure there is agreement between the hospice and existing or prospective client to provide the licensee with all the necessary information to allow the licensee to

comply with all regulations and to ensure the client's needs are met. Please also see the "Factual Basis" under Section 85001(f)(1).

Section 85075.1(b)(6)(B)

Specific Purpose:

This regulation is amended to provide clarity and consistency regarding the required training that shall be provided by the hospice agency to all staff caring for hospice clients. Training must be completed prior to the initiation of hospice services in the facility for the client who is terminally ill.

Factual Basis:

This amendment is necessary for clarity and consistency with H&S Code section 1507.3(a) and applies to all staff caring for terminally ill clients receiving hospice services. Hospice training will be provided by the hospice agency and must be completed before hospice care begins.

Section 85075.1(h)(1)

Specific Purpose:

This regulation is amended to specify the requirement for licensees to maintain a record of the written request by the client or his or her Health Care Surrogate Decision Maker, if any, to receive hospice services while in the facility and his or her advance directive and/or request regarding resuscitative measures, if any.

Factual Basis:

This amendment is necessary for clarity and consistency regarding the record keeping requirement by the licensee of the terminally ill client's or his or her Health Care Surrogate Decision Maker's, written request for acceptance or retention in the facility while receiving hospice services and record keeping of his or her advance directive or request regarding resuscitative measures, if any.

Section 85075.1(l)

Specific Purpose:

This regulation is necessary to comply with H&S Code section 1566.45 regarding terminally ill clients who are receiving hospice care and are bedridden.

Factual Basis:

This amendment is necessary for clarity and consistency with H&S Code section 1507.3(a), which permits an ARF to accept as a new client a terminally ill person who is already receiving hospice services and is bedridden, if certain conditions are met. This amendment makes regulations consistent for both existing and prospective clients receiving hospice to require the licensee to obtain a fire clearance for the safety of all bedridden clients as required by H&S Code section 1566.45.

Handbook Section 85075.1(l)

Specific Purpose/Factual Basis:

This Handbook reference has been added for the purpose of clarity and consistency to reflect the correct H&S Code section regarding the admission or retention of bedridden clients in this facility type. The prior referenced H&S Code section 1569.72(b) was specific to bedridden residents in Residential Care Facilities for the Elderly (RCFE). Additionally, this handbook section is corrected and added for the ease of access by the LPA and for staff responsible for the enforcement of CCLD regulations in the ARF facilities. This H&S Code section 1566.45(e) is the correct reference for ARF facility types. Handbook reference material is reflected at the discretion and formatting preference/style of the CDSS. Handbook material is for the ease of access to reference material and is not “cited” by LPA staff within the CCLD for enforcement purposes.

Section 85075.1(m)

Specific Purpose:

This regulation is added to include existing and prospective clients who receive care in a facility for any condition or care requirements relating to naso-gastric and naso-duodenal tubes and Stage 3 and Stage 4 dermal ulcers, provided these clients have been diagnosed as terminally ill and are receiving hospice services in accordance with a hospice care plan. This also would include clients who have prohibited health conditions with the exception that clients with active or communicable tuberculosis (TB) or any condition of care requirements which would require the facility to be licensed as a health care facility, would be prohibited. Licensees who have obtained hospice care waivers would not have to also request individual exceptions for terminally ill clients receiving care specifically addressed in the hospice care plan.

Factual Basis:

This regulation is necessary for clarity and consistency with H&S Code section 1507.3. This added regulation as allowed by the amendments in H&S Code section 1507.3(a)(2) allows existing and prospective clients to be accepted or retained in a facility provided they have 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). This amendment also is necessary for clarity and consistency with H&S Code section 1507.3(a)(4), providing that the hospice care plan design provides for care, services and necessary medical intervention related to a client's terminal illness supplementing the care and supervision provided by the facility. Furthermore, this amendment also is necessary for clarity and consistency with H&S Code section 1507.3(c)(3), providing that facility staff have received training from the hospice agency on the expected course of the resident's illness and symptoms of impending death.

Section 85075.1(n)

Specific Purpose:

This regulation is added to include clients who are terminally ill and receiving hospice care who have or may develop any restricted health conditions listed in Section 80092. For clients who have been diagnosed as terminally ill and are receiving hospice services in accordance with a hospice care plan, licensees would be allowed to retain or admit these clients without meeting the requirement to develop and maintain a separate written Restricted Health Condition Care Plan in accordance with Section 80092.2. Licensees who have obtained hospice care waivers do not have to request individual health care exceptions for terminally ill clients receiving hospice care for restricted health conditions that are specifically addressed in the hospice care plan.

Factual Basis:

This regulation is necessary for clarity and consistency with H&S Code section 1507.3, which allows for the judgment of the Department, based on specific conditions met, that a facility has the ability to meet the restricted health conditions for current or prospective clients, provided such restricted health conditions are addressed in the clients' hospice care plan. Clients who have been diagnosed as terminally ill and are receiving hospice services 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), may be retained or admitted without the licensee's requirement to develop and maintain a separate written Restricted Health Condition Care Plan.

Section 85075.1(o) is renumbered from 85075.1(m)

Specific Purpose/Factual Basis:

This change is without regulatory effect and is for editorial purposes only. This regulation has been re-lettered in order to accommodate previous regulations which have been added.

Section 85075.2(a)

Specific Purpose:

This regulation is amended to include the requirements for the licensee's written request for the granting of a facility hospice care waiver to accept or retain clients who are terminally ill and are receiving hospice care services.

Factual Basis:

This amended regulation is necessary for clarity and consistency with Health and Safety (H&S) Code section 1507.3(a) which requires licensees to request a facility hospice care waiver to accept or retain clients who are terminally ill and receiving hospice care services in the facility.

Section 85075.2(a)(4)

Specific Purpose:

This regulation is amended to repeal the regulation that establishes a residency requirement for individuals prior to receiving hospice services as defined in H&S Code section 1507.3 and H&S Code section 1566.45. This regulation also moves the requirement from Title 22 85075.2(c) for the licensees written statement to provide additional care staff if required by the hospice care plan to this regulation, Title 22 85075.2(a)(4).

Factual Basis:

It is necessary for clarity and consistency with H&S Code section 1507.3 to amend and repeal the regulation that establishes a residency requirement for the acceptance and retention of terminally ill clients receiving hospice. The adoption of this regulation is also necessary to remove duplicative language requiring the licensee to provide a statement that additional care staff will be provided if required by the hospice care plan.

Section 85075.2(c)

Specific Purpose:

This amendment in regulation is to remove and avoid duplication of the requirement by the Department of the licensee to provide additional care staff if required by the hospice care plan.

Factual Basis:

This regulation avoids duplicative language and moves the requirement from 85075.2(c) to 85075.2(a)(4) for the licensee to provide a statement that additional care staff will be

provided if required by the hospice care plan. Please also see the “Factual Basis” under Section 85075.2(a)(4) above.

Section 85075.2(d)

Specific Purpose:

This regulation is amended specifically to reflect that any waiver granted by the Department shall also include terms and conditions necessary to ensure the well-being of clients “receiving hospice care.”

Factual Basis:

This amended regulation is necessary for clarity and consistency with H&S Code section 1507.3(a), which requires an ARF to ensure the well being of existing or prospective clients receiving hospice care and all other clients as identified in the terms and conditions of waivers granted by the Department.

Section 85075.2(d)(1)

Specific Purpose:

This regulation is amended to include the written and signed request for acceptance or retention of the client in the facility while receiving hospice services by the client or his or her Health Care Surrogate Decision Makers, if any.

Factual Basis:

This amendment is necessary for clarity and consistency with H&S Code section 1507.3(a)(5) which requires an agreement between the facility and the hospice regarding the care plan for the terminally ill resident and for the plan to designate the primary or other care provider roles in the health care plan for the client. The health care plan is to specifically outline the tasks of the facility as authorized for a residential facility under this chapter.

Section 85075.2(d)(2)

Specific Purpose:

This regulation is amended to include the requirement of the licensee to notify the Department within five working days of the acceptance and/or retention of terminally ill clients in the facility.



Factual Basis:

This amendment is necessary for clarity and consistency with H&S Code section 1507.3(a) which allows facilities to accept or retain individuals receiving hospice care services in an ARF. This amendment is also necessary to make consistent the regulatory requirements to notify the Department within five working days of the initiation of hospice services provided for any terminally ill client.

Section 85075.2(e)(1)

Specific Purpose:

This regulation is amended to delete the language “substantiating evidence” and “received and accepted for consideration,” as it is implied, by the Department's ability to grant an “approval or denial” response to the licensee, the information submitted is sufficient.

Factual Basis:

This amendment is necessary in order to eliminate multiple resources and communication in the notification process by the Department as to the status of a hospice waiver request. This amendment does not limit the need and request for information or documentation by either party, the licensee or the Department, but instead limits the Department's written notification to a simple notification of “approval or denial” of the licensee’s request. Specific to documentation required and/or needed for a completed request from the licensee is described in Section 85075.2(a)(1)-(4).

Section 85075.2(e)(2)(A)

Specific Purpose/Factual Basis:

This regulation is amended to correct the misspelling of the word, information. This change is without regulatory effect and is for editorial purposes only.

Section 85075.2(e)(A)(3)

Specific Purpose/Factual Basis:

This regulation is amended to remove the duplicative statement, which is already in the amended Section 85075.2(e)(1). This editorial change is without regulatory effect and is for purposes of clarity.

Section 85075.3(b)(3):

Specific Purpose:

This regulation is added for the purpose of clarity and consistency specifically regarding terminally ill clients receiving hospice, who have an advance directive and/or request regarding resuscitative measures form on file and the need to call emergency response 9-1-1. Procedures regarding emergencies for terminally ill clients receiving hospice allows the facility the option to not call emergency response 9-1-1 for these clients who are experiencing a life-threatening emergency and are displaying symptoms of impending death directly related to the expected course of the client's terminal illness and who have an advance directive and/or request to forego resuscitative measures. For emergencies where the client is not displaying symptoms of impending death directly related to the expected course of the client's terminal illness, the facility shall immediately telephone emergency response 9-1-1.

Factual Basis:

This amendment is necessary for clarity and consistency with H&S Code section 1507.3(c), which allows staff in ARFs to contact the hospice agency in lieu of calling 9-1-1 to honor the advance directive or request regarding resuscitative measures under specified conditions. These specified conditions are specifically for terminally ill clients on hospice experiencing a life-threatening emergency and is displaying symptoms of impending death directly related to the expected course of the client's terminal illness and who have elected in an advance directive or request to forego resuscitative measures.

Handbook Section 85075.3(b)(3):

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) and for staffs' responsibility for the enforcement of CCLD regulations in the ARFs. This H&S Code section [1507.3(c)] referenced in Section 85075.3(c) is added as a result of AB 1166 (2003) and as "Handbook" material at the discretion and formatting preference/style of the CDSS. Handbook material is for the ease of access to reference material and is not "cited" by LPA staff within the CCLD for enforcement purposes.

b) Identification of Documents Upon Which the Department Is Relying

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, Assembly Bill 1166, Chapter 312, Statutes of 2003 which amended Section 1507.3 of the Health and Safety Code to permit the ARF licensee to request waiver authorization for the acceptance of terminally ill individuals already receiving hospice care services and the option to notify a terminally ill resident's hospice agency in lieu of calling emergency responders (9-1-1), during a life threatening emergency under specified conditions.

In developing the regulatory action, CDSS considered no other alternatives and there were no alternatives or any opposition of record to these statutory amendments. The CDSS determined there would be no more effective way than regulation development in carrying out the purpose for which the statutes 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 than implementing the statutory policy or other provision of law.

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. The CDSS has made an initial determination that the proposed action has no apparent additional cost impacts to individuals or facilities and 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 document was relied upon in proposing the regulatory action:

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 an Adult Residential Facility (ARF) and will provide

the option for ARF 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 an advance directive and/or request regarding resuscitative measures on file. These regulations acknowledge the relationship between the individual and the hospice agency when the individual is actively dying and has elected to not be resuscitated, pursuant to his or her own advance directive and/or request regarding resuscitative measures. These regulations provide consistency with the Community Care Facility (CCF) 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.