`Testimony of Brenda G. Klutz, Senior Consultant
Health Management Associates
Before the
Senate Health Committee
Senator Elaine Kontominas Alquist, Chair
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1:30 to 3:30 P.M.

Informational Hearing on: A.B. 950 (Hernandez): Licensed Hospice Facilities

Good afternoon, Madame Chair. My name is Brenda Klutz. I am a Senior Consultant for Health Management Associates, a national health policy consulting firm. Thank you for the opportunity to provide an overview of hospice services in California, in the context of AB 950 (Hernandez).

Overview of Hospice Services

Hospice is considered to be the model for quality, compassionate care for people facing a life-limiting illness or injury. Hospice care involves a team-oriented approach to expert medical care, pain management, and emotional and spiritual support expressly tailored to the patient's needs and wishes. Support is provided to the patient's loved ones as well. At the center of hospice and palliative care is the belief that each of us has the right to die pain-free and with dignity, and that our families will receive the necessary support to allow us to do so.

Hospice focuses on caring, rather than curing. Hospice is a service that is designed to be brought to the patient, wherever they may live. In most cases care is provided in the patient's home. However, hospice is also provided in health facilities that are owned an operated by a hospice provider, in hospitals, nursing homes, intermediate care facilities for the developmentally disabled and other long-term care facilities[1].

In 1986, Congress made the hospice benefit permanent and states were given the option of including hospice in their Medicaid programs. California has elected to make hospice a Medi-Cal benefit.

There is significant literature about need for patient's to be informed of their care options at the end-of-life, the benefits of hospice care to patients and their families, and the cost-effective nature of hospice care. In order to be mindful of the committee's time, this testimony will not focus on the proven benefits of hospice, but rather provide an overview of state licensing and federal

certification for hospice, funding for hospice, and hospice facilities in other states, with particular emphasis on staffing and bed limits.

In 2008, there were 1,041,842 hospice patients nationally, and 86,678 hospice patients in California paid for by Medicare. The following chart summarizes who provides care to Medicare beneficiaries at the end-of-life[2]:

	California	National
Hospice	35%	37%
Hospitals	20%	23%
Skilled Nursing Facilities	4%	6%
Home Health Agencies	2%	2%
None of These	38%	31%

Examples of Quality Requirements/Initiatives in Hospice Care

Federal Medicare hospice conditions of participation require certified hospice to engage in a quality performance measurement process. This process is called the "Quality Assessment and Performance Improvement" or QAPI process.

The hospice must develop, implement, and maintain an effective, ongoing, hospice-wide data-driven quality assessment and performance improvement program. The hospice's governing body must ensure that the program: Reflects the complexity of its organization and services; involves all hospice services (including those services furnished under contract or arrangement); focuses on indicators related to improved palliative outcomes; and takes actions to demonstrate improvement in hospice performance. The hospice must maintain documentary evidence of its quality assessment and performance improvement program and be able to demonstrate its operation to CMS[3].

As part health care reform hospice providers will be required to comply with mandated public quality reporting.

In addition, many hospice providers participate in the National Hospice and Palliative Care Organization's quality performance measures[4] to:

- Identify components of quality care
- Discover what areas of care delivery are effective
- Target specific areas for improvement

These include family evaluations of hospice care, bereavement services and outcome measures such as effectiveness of palliative care.

Licensing Requirements

Licensing requirements for hospice providers and hospice services are found in the Health and Safety Code Sections 1745 through 1759. In addition, state law provides that licensed home health agencies may also provide hospice services under their home health agency license, without having to be separately licensed as a hospice.

State statute specifies that the "Standards for Quality Hospice Care"[5] are to be used in lieu of state regulations until the Department of Public Health promulgates hospice regulations.

Currently, there are some health facilities that are owned and operated by and licensed to hospice providers. These health facilities are licensed as: congregate living health facilities (CLHF-B), skilled nursing facilities and one specialty hospital. The first health facility owned and operated by a hospice provider was licensing in California in 1977. California hospice providers have been providing hospice care to patients in their own licensed and certified health facilities for over 30 years.

Certification Requirements for Medicare and Medi-Cal Reimbursement

Medicare will pay for hospice services to be provided to eligible Medicare beneficiaries. Hospice providers are required to meet specific federal Conditions of Participation in order to provide these services.

Election

The hospice Medicare benefit is not available to patients who elect to continue curative treatment. The hospice must obtain a certification of terminal illness with a prognosis of six months or less if the terminal illness runs its normal course. This certification must be obtained by either the medical director of the hospice or a physician-member of the hospice interdisciplinary group and the patient's personal physician within the first 90 days of hospice coverage.

Hospice benefits are available for two periods of 90 days, and an additional number of subsequent 60-day periods that meets specific criteria.

Services that are paid for by Medicare include:

- Physician services furnished by hospice- employed physicians and nurse practitioners (NP) or by other physicians under arrangement with the hospice;
- Nursing care;
- Medical equipment;
- Medical supplies;
- Drugs for symptom control and pain relief;
- Hospice aide and homemaker services;
- Physical therapy;
- Occupational therapy;
- Speech-language pathology services;
- Social worker services;
- Dietary counseling;
- Spiritual counseling;
- Grief and loss counseling for the individual and his or her family;
- Short-term inpatient care for pain control and symptom management and for respite care; and
- Any other services as identified by the hospice interdisciplinary group.

Medicare will not pay for the following services when hospice care is chosen:

- Hospice care furnished by a hospice other than the hospice designated by the individual (unless furnished under arrangement by the designated hospice); and

- Any Medicare services that are related to treatment of the terminal illness or a related condition for which hospice care was elected or that are equivalent to hospice care, with the exception of the following:

    - Care furnished by the designated hospice;
    - Care furnished by another hospice under arrangements made by the designated hospice; or
    - Care furnished by the individual's attending physician who is not an employee of the designated hospice or receiving compensation from the hospice under arrangement for those services.

- Room and board if hospice care is provided in the home, in a nursing home, or in a hospice residential facility. However, room and board are allowable services under the Medicare hospice benefit for short-term inpatient care that the hospice arranges; and

- Care in an emergency room, inpatient facility care, outpatient services, or ambulance transportation, unless these services are either arranged by the hospice medical team or are unrelated to the terminal illness

Medi-Cal Hospice Benefit

Hospice providers are required to be Medicare certified in order to be a provider enrolled to provide hospice services to Medi-Cal beneficiaries. Medicare is always the payer of first resort, with Medi-Cal paying applicable room and board payments and any co-insurance amounts. Hospice benefits will be approved at such time and for the same periods of time as Medicare benefits are elected[6].

Four Levels of Payment Reimbursed by Medicare and Medi-Cal

The Centers for Medicare and Medicaid Services (CMS) identifies four payment levels for hospice services. Certified hospice must provide each of these categories of hospice services.

- **Routine Home Care** - A routine home care day is a day on which an individual who has elected to receive hospice care is at home

- **Continuous Home Care** - A continuous home care day is a day on which an individual, who has elected to receive hospice care, is not in an inpatient facility and receives hospice care consisting predominantly of nursing care on a continuous basis at home. Home health aide (also known as a hospice aide) or homemaker services or both may also be provided on a continuous basis. Continuous home care is only furnished during brief periods of crisis and only as necessary to maintain the terminally ill patient at home.

- **Short-term Inpatient** - An inpatient respite care day is a day on which the individual who has elected hospice care receives care in an approved facility on a short-term basis for respite. (Note: A hospice can provide short-term inpatient care (respite) under contract with a hospital, skilled nursing facility or other licensed and certified health facility, or the hospice can provide general inpatient care in a facility that they own and operate.)

- **General Inpatient Care** - A general inpatient care day is a day on which an individual who has elected hospice care receives general inpatient care in an inpatient facility for pain control or acute or chronic symptom management which cannot be managed in other settings. (Note: A hospice can provide general inpatient care under contract with a hospital, skilled nursing facility or other licensed and certified health facility, or the hospice can provide general inpatient care in a facility that they own and operate.)

The following chart[7] shows the relative number of patient days for each level of care:

Level of Care	California (Patient Days - 2008)	National (Patient Days - 2008)
Routine Home Care	5,470,906 (98.4%)	70,934,151 (97.4%)
Continuous Home Care	18,874 (0.3%)	154,639 (0.21%)
Short-Term Inpatient (Respite Care)	7,537 (0.00002%)	133,810 (0.18%)
General Inpatient Care	59,893 (1.1%)	1,570,358 (2.1%)

Hospice providers have established strong contractual partnerships with other health facilities in order to provide hospice services to the patients in those facilities. However, can be difficult for many hospice providers to provide hospice services in facilities owned and operated by other entities, and some health facilities may be reluctant to contract with hospice to provide hospice services. California has a much lower utilization of inpatient services than the national average.

Some hospice providers have become licensed as a health facility in order to provide inpatient care directly (rather than under contract or arrangement), and have been providing care to hospice patients in these facilities. The first hospice provider to provide hospice care in their own facility was in 1987. Since that time, there are approximately 11 hospice providers who have become licensed as congregate living health facilities (CLHF-B), 1 hospice provider that has become licensed as a specialty hospital, and an unknown number of skilled nursing facilities that are licensed to hospice providers.

Some of these health facilities licensed to hospice providers are providing general inpatient care and short-term inpatient care (respite) in accordance with federal requirements.

Funding for Hospice Services

According to the National Hospice and Palliative Care Organization (NHPCO)[8] the national data for the percentage of patient served, by payer is:

Payer	2008	2007
Medicare Hospice Benefit	84.3%	83.6%
Managed Care or Private Insurance	7.8%	8.5%
Medicaid Hospice Benefit	5.1%	5.0%
Uncompensated or Charity Care	1.3%	1.3%
Self Pay	0.7%	0.9%
Other Payment Source	0.8%	0.7%

Medicare Rates for Hospice Services

Each year, CMS publishes the Medicare reimbursement rates for the four payment levels. The daily hospice payment rates are adjusted to account for differences in wage rates among markets. Each category of care's base rate has a labor share and a non-labor share. The labor share of the base payment amount is adjusted by the hospice wage index. Base rates are updated annually based on the hospital market basket index.

The Medicare reimbursement rates for Federal Fiscal Year 2010 are[9]:

Fiscal Year 2010 Hospice Payment Rates

Description	Rate	Wage Component Subject to Index	Non-weighted Amount
Routine Home Care	$142.91	$98.19	$44.72
Continuous Home Care	$834.10 for 24 hours or $34.75 per hour	$573.11	$260.99
Inpatient Respite Care	$147.83	$80.02	$67.81
General Inpatient Care	$635.74	$406.94	$228.80

CMS permits hospices to charge a co-payment for certain drugs or biologicals (5% of cost, not to exceed $5.00) or respite care, within certain limits.

Medi-Cal Rates for Hospice Services

The Department of Health Care Services (DHCS) published the Medi-Cal reimbursement rates effective October 1st of each year. The Medi-Cal reimbursement rates vary by geographic region and by level of care provided. Hospice services do not require prior authorization, except for general inpatient care which does require an approved Treatment Authorization Request (TAR). The Medi-Cal reimbursement rates that went into effect on October 1, 2009[10] are:

CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES MEDI-CAL BENEFITS, WAIVER ANALYSIS AND RATES DIVISION HOSPICE RATES EFFECTIVE OCTOBER 1, 2009				
LOCATION BY COUNTIES	**ROUTINE CARE (Z 7100)**	**CONTINUOUS CARE (HOURLY) (Z 7102)**	**INPATIENT RESPITE CARE (Z 7104)**	**GENERAL INPATIENT CARE (Z 7106)**
NATIONAL RATES	**143.10**	**34.77**	**155.61**	**635.74**
RURAL AREAS	172.18	41.83	180.52	756.07
ALAMEDA & CONTRA COSTA	211.80	51.46	214.46	920.07
BUTTE	157.88	38.36	168.27	696.90

CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES MEDI-CAL BENEFITS, WAIVER ANALYSIS AND RATES DIVISION HOSPICE RATES EFFECTIVE OCTOBER 1, 2009				
LOCATION BY COUNTIES	**ROUTINE CARE (Z 7100)**	**CONTINUOUS CARE (HOURLY) (Z 7102)**	**INPATIENT RESPITE CARE (Z 7104)**	**GENERAL INPATIENT CARE (Z 7106)**
NATIONAL RATES	**143.10**	**34.77**	**155.61**	**635.74**
FRESNO	159.04	38.64	169.26	701.70
IMPERIAL	135.55	32.94	149.14	604.49
KERN	160.91	39.10	170.86	709.44
KINGS	157.59	38.29	168.03	695.72
LOS ANGELES	171.49	41.67	179.93	753.22
MADERA	127.17	30.90	141.96	569.82
MERCED	171.85	41.76	180.24	754.73
MONTEREY	200.33	48.67	204.63	872.58
NAPA	195.48	47.50	200.48	852.52
ORANGE	169.26	41.12	178.02	743.99
RIVERSIDE & SAN BERNARDINO	163.81	39.80	173.35	721.44
SACRAMENTO, EL DORADO, PLACER & YOLO	185.65	45.11	192.06	811.82
SAN DIEGO	164.53	39.98	173.96	724.41
SAN FRANCISCO, MARIN, SAN MATEO	205.95	50.04	209.45	895.86
SAN JOAQUIN	169.48	41.18	178.21	744.92
SAN LUIS OBISPO	173.91	42.25	182.00	763.23
SANTA BARBARA	168.38	40.91	177.27	740.36
SANTA CLARA & SAN BENITO	212.30	51.58	214.89	922.14
SANTA CRUZ	215.29	52.31	217.45	934.52
SHASTA	187.29	45.51	193.46	818.62
SOLANO	193.81	47.09	199.05	845.60
SONOMA	205.94	50.04	209.44	895.82
STANISLAUS	171.34	41.63	179.80	752.61

CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES MEDI-CAL BENEFITS, WAIVER ANALYSIS AND RATES DIVISION HOSPICE RATES EFFECTIVE OCTOBER 1, 2009				
LOCATION BY COUNTIES	**ROUTINE CARE (Z 7100)**	**CONTINUOUS CARE (HOURLY) (Z 7102)**	**INPATIENT RESPITE CARE (Z 7104)**	**GENERAL INPATIENT CARE (Z 7106)**
NATIONAL RATES	**143.10**	**34.77**	**155.61**	**635.74**
SUTTER & YUBA	160.37	38.97	170.40	707.20
TULARE	150.06	36.46	161.57	664.55
VENTURA	168.81	41.02	177.64	742.15

Characteristics of Hospice Facilities in Other states

In 2009, Health Management Associates conducted a quick scan of other states to determine the extent to which those other states had a separate category of licensure for "hospice facility".

Thirty-five (35) states were identified as having a separate licensing category of hospice facility. It is our understanding that additional states, including Texas, have established a hospice facility licensing category during this past year. In addition, there may be some states that do not have a specific hospice facility licensure, but do permit hospice services to be provided in accordance with federal Medicare requirements (which would include a hospice providing general inpatient care directly).

Some of the characteristics of these licensing requirements are:

Bed Size Limits

The vast majority of states (30 out of 35) do not impose a limit on the number of beds that can be licensed to a hospice facility. Five (5) out of the thirty (30) states impose a bed limitation.

- Arkansas permits up to 36 beds
- Georgia permits up to 25 beds
- Massachusetts permits up to 6 beds
- New York permits up to 8 beds, or up to 16 beds if participating in a demonstration program
- Oklahoma permits up to 12

Staffing Requirements under Other State's Licensing

Of the thirty-five (35) states with hospice facility licensing requirements, three (3) states had no specific staffing requirements. Of the thirty-two (32) states with staffing requirements, there was one (1) state, South Carolina, with nursing services staffing ratios Of the other 31 states, all states require that nursing services be available 24 hours per day, and that the nursing services be under the supervision of a registered nurse. Seven (7) states require that a registered nurse be on each shift.

Staffing Requirements under Federal Medicare Hospice Conditions of Participation

In addition to staffing standards imposed by state licensing requirements, the federal Medicare hospice conditions of participation also include staffing standards. Hospices that provide inpatient care directly (in their own facility) must meet the following requirements[11]:

- The hospice is responsible for ensuring that staffing for all services reflects its volume of patients, their acuity, and the level of intensity of services needed to ensure that plan of care outcomes are achieved and negative outcomes are avoided.

- The hospice facility must provide 24-hour nursing services that meet the nursing needs of all patients and are furnished in accordance with each patient's plan of care. Each patient must receive all nursing services as prescribed and must be kept comfortable, clean, well-groomed, and protected from accident, injury, and infection

- If at least one patient in the hospice facility is receiving general inpatient care, then each shift must include a registered nurse who provides direct patient care.

Fire Life Safety, Building, and Seismic Standards

Of the 35 states with a hospice facility licensure category, there were 24 states that make no reference to building or seismic standards in the licensing requirements. There were 11 that stated that the hospice facility must meet state and federal safety standards. This is not to say that hospice facilities are not required to meet building standards as a condition of licensure, only that they are not specifically referenced in the licensing standards.

In California, health facilities are required to comply with state and local building standards according to their category of licensure. Title 24 and local building standards establish specific building and/or seismic standards. The Office of Statewide Health Planning and Development (OSHPD) has the authority to recommend, and the California Building Standards Commission have the authority to adopt building standards, in accordance with state law.

Under the federal Medicare conditions of participation, any hospice provider who wants to own and operate their own health facility and provide general inpatient care to their patients must meet the same fire and life safety requirements as a skilled nursing facility. These standards are the National Fire Protection Association's (NFPA) 101, standards for skilled nursing facility, 2000 edition.

A few of the provisions of these fire life safety requirements are:

- Safe use and location of alcohol-based hand rubs
- Effective smoke barriers and compartmentalization
- Smoke detection and fire suppression systems
- Door openings, corridor width and safe exits and egress
- Fire Alarm Systems
- When fire watch is triggered
- Illumination and provisions for emergency power
- Emergency plans and fire drills
- Smoking regulations
- Portable heating devices

Health facilities that are owned and operated by a hospice provider and that provide general inpatient care will receive a federal life safety code survey from the state survey agency, in addition to the routine and periodic hospice certification survey unless they choose to be certified through accreditation from an approved accreditation organization and be granted deemed status for Medicare conditions of participation.

Conclusion

Thank you for the opportunity to provide this very quick overview of hospice and hospice services. I am happy to respond to any questions that the committee might have.

Endnotes[12]

[1] Quoted largely from the National Hospice and Palliative Care Organization, "What is Hospice and Palliative Care?", http://www.nhpco.org/i4a/pages/index.cfm?pagid=4648&openpage=4648

[2] California Hospice and Palliative Care Association, "Market Report"

[3] 41 CFR 418.58

[4] National Hospice and Palliative Care Organization, "NHPCO Fact and Figures: Hospice Care in America, 2009 Edition", page 13, http://www.nhpco.org/files/public/Statistics_Research/NHPCO_facts_and_figures.pdf

[5] California Hospice and Palliative Care Association, "Standards of Quality Hospice Care", http://www.calhospice.org/included/docs/regulatory/Standards_of_Quality_Hospice_Care_2003.pdf

[6] Department of Health Care Services, "Criteria Manual Chapter 11: Criteria for Hospice Care", http://www.dhcs.ca.gov/services/medi-cal/Documents/ManCriteria_31_HspeCare.htm

[7] California Hospice and Palliative Care Association, "Market Report"

[8] National Hospice and Palliative Care Organization, "NHPCO Fact and Figures: Hospice Care in America, 2009 Edition", page 10, http://www.nhpco.org/files/public/Statistics_Research/NHPCO_facts_and_figures.pdf

[9] Centers for Medicare and Medicaid Services, "Hospice Payment System", https://www.cms.gov/MLNproducts/downloads/hospice_pay_sys_fs.pdf , November 2009, page 4. (Note: This fact sheet provides an excellent summary of the hospice benefit)

[10] Department of Health Care Services, "Hospice Rates Effective October 1, 2009", http://www.dhcs.ca.gov/services/medi-cal/Documents/LTCRU/ltcru_09Hospice_PSD.pdf

[11] 42 CFR 418.110 (a) & (b)

Other Resources

National Hospice and Palliative Care Organization:
http://www.nhpco.org/templates/1/homepage.cfm

California Hospice and Palliative Care Association
http://www.calhospice.org/

California Association of Health Services at Home:
http://www.cahsah.org/

Coalition for Compassionate Care:
http://finalchoices.org/

Family Caregiver Alliance/National Center on Caregiving:
http://www.caregiver.org/caregiver/jsp/home.jsp

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