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California State Senate

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TWENTY-SIXTH SENATE DISTRICT



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May 25, 2021

Honorable Rudy Salas, Jr.
Chair, Joint Legislative Audit Committee
State Capitol Room 107
Sacramento, CA 95819

Dear Chair Salas and Committee Members,

We respectfully request the approval of a state audit to identify deficiencies and recommend improvements to the hospice licensure and oversight process in California. We have grave concerns that current regulations fall short of addressing the dramatic increase in the licensing of hospice care providers, some of which appear to be undermining the quality of patient care.

Background

Hospice services provide palliative care to alleviate the physical, emotional, social, and spiritual discomfort a patient experiences due to terminal illness during the last phases of life. The hospice movement, and its integration into western medicine, is an uplifting story about compassion and the best instincts of humanity embracing the mission of providing comfort and solace to those among us who are dying.

Yet an exponential boom in providers has transformed end-of-life care that was once the realm of charities and religious groups into a multibillion-dollar business dominated by profit-driven operators. A 2019 Sacramento Bee investigation found California's hospice system to be "marred by lax oversight and an inability of regulators to take meaningful action against hospices that may have violated rules and jeopardized the health of patients."

On December 9, the Los Angeles Times published two articles describing the findings of a year-long investigation into hospice fraud and abuse in Los Angeles County and statewide. The investigation found that California appears to have become the epicenter for hospice fraud and abuse. A movement intended to provide comfort care to those who are dying has been infiltrated by companies targeting older Californians with audacious, widespread scams.

According to both news investigations, intense competition for lucrative Medicare payments has spawned a cottage industry of illegal practices, including kickbacks to doctors and recruiters who zero in on prospective patients at retirement homes and other venues. The Bee notes that, unlike nursing homes, hospices can pay third-party agencies to inspect them in place of state regulators. This poses a potential conflict of interest, as such agencies are financially incentivized to approve the hospices that are paying them.

According to the LA Times, nearly a quarter of hospices in the nation are located in California, which has among the lowest statutory barriers to licensure. California also leads the nation in reported violations for enrolling patients without proof they are terminally ill. Substandard hospices in California are also rarely penalized. The state has no comprehensive penalty or oversight system for hospice cares as it does for nursing homes.

Why an Audit is Needed

A comprehensive state audit is necessary to identify specific deficiencies and recommend statutory improvements to the hospice licensure and oversight process in California. Such an audit will spur attention and action to improve what many stakeholders, including some hospice providers themselves, agree is a regulatory system warranting reform.

We ask that the State Auditor to prioritize this request. Senator Allen is authoring legislation (SB 664), currently pending, which places a moratorium on new hospice licensures in California until an audit is completed and the legislature is given time to act on its recommendations.

Audit Scope

1. Please describe the growth trend of hospice providers in California during the last decade, and potential factors that led to this growth.
2. Are other states preventing excessive growth of hospice providers? How so?
3. Examine and describe the potential factors related to how and why California has arguably become an epicenter for hospice fraud and abuse in the nation.
4. The United States Health and Human Services Office of the Inspector General (HHS OIG) reported that hospice providers rarely report harm to hospice patients due to unenforced reporting requirements. As such, evaluate hospice reporting of abuse and neglect in California and assess compliance with mandated reporting requirements. How could California strengthen reporting requirements for hospices and ensure that they are enforced?
5. The HHS OIG reported that hundreds of hospices are maximizing profits by targeting residents of nursing facilities and assisted living facilities who require less complex care. Assess this trend in California and examine whether the residents of long-term care facilities and state and federal payers are getting full value for this expensive care. Do California's Department of Health Care Services and Department of Public Health (CDPH) have the authority and adequate resources to effectively monitor and evaluate the appropriateness, adequacy and quality of hospice services to residents of nursing and assisted living facilities and to evaluate coordination between hospice providers and long-term care facilities?
6. The HHS OIG and the media have reported that potential and actual hospice patients and their families are kept in the dark about the quality of hospice providers. Examine and assess the adequacy of hospice provider information presented on CDPH's Cal Health Find website. Is it meaningfully helping the public distinguish good hospices from bad ones? What improvements and additional information are necessary?
7. Examine and describe the impact of hospice fraud and abuse on Californians who have been victim to it.
8. Assess the scope of hospice fraud in California and its impact on the Medicare and Medi-Cal programs. This analysis should include, but is not limited to, all of the following:
 - a. What types of hospice fraud are most prevalent in California?
 - b. Does California have adequate resources to identify, address, prosecute and deter hospice fraud? What additional resources are needed?
 - c. Identify and describe annual Medi-Cal program spending on hospice care for Medi-Cal beneficiaries. What changes in spending have occurred over the last decade?
 - d. Has Medi-Cal fraud by hospice providers been investigated or studied? If so, what are the findings?
 - e. What systems does Department of Healthcare Services have to detect fraud by hospice providers? Are they effective? Is the system effective at preventing unqualified providers from being certified by Medi-Cal? How could it be strengthened?
 - f. Could California save money by preventing hospice fraud within the Medi-Cal system? How much?
 - g. What are CDPH and DHCS doing to prevent older Californians from being targeted in hospice scams?
9. California has the highest percentage (91.2%) of for-profit hospice providers of any state in the nation. Determine why this occurred and analyze its impact on hospice services and whether it has contributed to hospice fraud in the state.

10. California has nearly the highest percentage (82%) of hospice providers in the nation that have elected “deemed status.” This means their compliance with federal hospice standards is determined by an accreditation agency selected and paid for by the hospice. How did this occur and why? Evaluate the impact on hospice quality, oversight and transparency.
 - a. How many third-party accreditation agencies operate in California?
 - b. Is there a difference between the accreditation process at CDPH and third-party agencies?
11. Evaluate the effectiveness and comprehensiveness of the California Department of Public Health’s (CDPH’s) system to screen and license applicants for hospice licensure. Such analysis should include, but is not limited to, the following:
 - a. Does CDPH make any determination whether additional hospice services are needed in a geographic region before granting additional licenses? Are applicants for hospice licenses ever denied due to lack of demonstrable need?
 - b. Does CDPH determine if an applicant for hospice licensure has the experience, education, resources, character and other necessary qualifications to provide high quality services? Is this process effective? Are applicants for hospice licenses ever denied on this basis?
12. Evaluate and determine the effectiveness of CDPH’s inspection system for hospice providers. This analysis should include, but is not limited to, all of the following:
 - a. How often are hospice providers inspected? Is it often enough?
 - b. Do inspections evaluate compliance with both California and federal standards?
 - c. Are California’s hospice standards sufficient? What improvements are needed?
 - d. Do inspections deter noncompliance? How often are hospices cited for repeated violations?
13. Evaluate and determine the effectiveness of CDPH’s system for identifying and investigating complaints against hospices. This analysis should include, but is not limited to, all of the following:
 - a. Assess and describe the CDPH system for identifying and responding to hospice complaints. How well does it work? How many complaints are filed annually? What trends exist in the categorization of complaints? Does CDPH have an effective system to prioritize hospice complaints?
 - b. How well does CDPH inform hospice patients and their representatives on how to file a complaint against a hospice? What improvements are needed?
 - c. Are complaint investigations of hospice providers timely? On average, how long are complaints open? How long do investigations take? Is there a backlog of complaints?
 - d. Are complaint investigations of hospice providers thorough and effective? How does CDPH evaluate and measure their effectiveness? What percentage of complaints are substantiated?
 - e. What actions are taken when complaints against a hospice are verified? How effective are the measures taken to ensure corrective actions are taken and violations are not repeated?
 - f. Are all complainants notified in writing of findings about hospice investigations? Does CDPH provide hospice complainants an opportunity to appeal if they are dissatisfied with the findings? How could communications with complainants and their due process rights be improved?
 - g. How does CDPH determine complainant satisfaction with its complaint investigations and findings on hospice complaints? Is the process effective?
 - h. What changes are needed to improve the effectiveness of hospice complaint investigations?

14. Evaluate and determine the effectiveness of CDPH's system for enforcing hospice requirements. This analysis should include, but is not limited to, all of the following:
 - a. Identify and describe the sanctions available to CDPH to enforce hospice requirements.
 - b. Determine and describe how often and under what circumstances CDPH applies sanctions to hospice providers.
 - c. Assess the effectiveness of the sanctions? Are they deterring violations, fraud, and abuse?
 - d. What reforms are needed to strengthen enforcement of hospice requirements?
15. What statutory reforms are needed in California to provide regulators with the authority and resources to screen, discipline, deny, and revoke licensure for unqualified, unscrupulous or unnecessary hospice providers?

Conclusion:

It is our intention that this important and timely audit will inform the legislature about any deficiencies in California's hospice licensure and oversight process, and provide meaningful policy recommendations to help shape the reforms that we fear are indeed necessary. We owe it to all Californians to protect the ethos of compassionate care which drives the hospice movement, so each of us might benefit from such care when we are facing the final days of our own lives.

Sincerely,

A handwritten signature in black ink that reads "Ben Allen". The letters are cursive and fluid.

BEN ALLEN
Senator, 26th District

A handwritten signature in black ink that reads "Henry Stern". The letters are cursive and stylized.

HENRY STERN
Senator, 27th District