

INITIAL STATEMENT OF REASONS

SUMMARY OF THE PROPOSED REGULATIONS

The Office of the Long-Term Care Patient Representative within the California Department of Aging (CDA) proposes the adoption of Section 1418.8(g). This regulation aims to clarify the timing of quarterly reviews conducted by the interdisciplinary team for medical interventions, as required by legislation mandating informed consent when a resident in a skilled nursing facility or intermediate care facility lacks capacity. In accordance with Health and Safety Code § 1418.8, this regulatory action is necessary to define the term “quarterly,” specify which interventions require quarterly reviews, and establish exemptions for one-time procedures, thereby preventing the unnecessary expenditure of resources. The proposed regulation will take effect on or after its official implementation date.

POLICY STATEMENT OVERVIEW

Problem Statement: The existing regulation in Health and Safety Code (HSC) § 1418.8(g) mandates that interdisciplinary teams in skilled nursing and intermediate care facilities conduct evaluations of prescribed medical interventions at least quarterly. However, it does not specify which interventions require review. While this requirement is intended to ensure regular and thorough assessments of ongoing treatments, it does not account for the varying nature of medical interventions. Specifically, it fails to recognize that certain interventions, such as one-time procedures, may not necessitate quarterly review. Additionally, the regulation lacks clarity in identifying which specific medical interventions should be subject to these reviews. This rigidity in evaluation frequency can impose unnecessary administrative burdens on both the Program and facilities, potentially diverting resources from other critical care needs. Moreover, it may not align with the best clinical interests of residents, particularly in cases where frequent reassessment is unwarranted.

Objectives (Goals): The broad objectives of this proposed regulatory action are to:

- Clarify Review Requirements – Define which specific medical interventions require quarterly evaluations to ensure compliance with Health and Safety Code § 1418.8(g).
- Enhance Regulatory Flexibility – Establish provisions that recognize the varying nature of medical interventions, including exemptions for one-time procedures that do not necessitate frequent review.
- Reduce Administrative Burden – Minimize unnecessary administrative tasks for interdisciplinary teams, allowing them to allocate resources more effectively toward critical care needs.

- Improve Clinical Relevance – Align the frequency of medical intervention reviews with best clinical practices to better serve the needs of residents in skilled nursing and intermediate care facilities.
- Ensure Efficient Resource Utilization – Prevent the diversion of staff time and facility resources toward redundant reviews, promoting efficiency without compromising patient care.

Benefits: The expected benefits of this proposed regulatory action include:

- Greater Clarity – Clearly defines which medical interventions require review, reducing confusion.
- Optimized Evaluations – Aligns review frequency with clinical necessity, ensuring appropriate monitoring.
- Reduced Administrative Burden – Eliminates unnecessary reviews of one-time procedures.
- Efficient Resource Use – Focuses healthcare efforts where they are most needed.
- Improved Patient Care – Enhances oversight of critical treatments and medications.
- Enhanced Compliance – Minimizes misinterpretation and ensures regulatory consistency.

BACKGROUND/AUTHORITY

Chapter 3.6 (beginning with Section 9260) of Division 8.5 of the California Welfare and Institutions Code established the Long-Term Care Patient Representative Program within the California Department of Aging. This program provides a public patient representative when no family member, friend, or authorized individual is available to participate in an interdisciplinary team review, as outlined in Section 1418.8(e) of the Health and Safety Code (HSC).

For residents determined by their attending physician and surgeon to lack the capacity to provide informed consent, decisions regarding prescribed medical interventions are made through an interdisciplinary team review. Previously, the participation of a patient representative in these reviews was optional. However, following a legal challenge by California Advocates for Nursing Home Reform (CANHR), a court ruling now mandates the inclusion of a patient representative whenever an interdisciplinary team convenes to make healthcare decisions requiring informed consent. This requirement took effect on January 27, 2023, leading to the formal establishment of the Office of the Long-Term Care Patient Representative Program.

A resident is considered incapable of providing informed consent if they cannot understand the nature and consequences of a proposed medical intervention, including its risks and benefits, or if they are unable to express a preference regarding the intervention. If the attending physician and surgeon determine that a resident lacks this capacity and no legal decision-maker can be located, the facility may contact the Long-Term Care Patient Representative Program to assign a public patient representative to participate in the interdisciplinary team review.

Additionally, the Office of the Long-Term Care Patient Representative Program, housed within the California Department of Aging, is responsible for coordinating these services statewide, as well as training and certifying public patient representatives.

AUTHORITY AND REFERENCE

Authority: Section 131200, Health and Safety Code.

Reference: Sections 1418.8(e) and (g), Health and Safety Code; Sections 9260 and 9295, Welfare and Institutions Code; *California Advocates for Nursing Home Reform v. Smith* (2019) 38 Cal. App. 5th 838; *California Advocates for Nursing Home Reform v. Sonia Angel* (2022) Alameda County Superior Court Case No. RG13700100.

SPECIFIC RATIONALE FOR EACH SECTION

Section 1418.8(g)(A) establishes the framework for initiating and conducting quarterly reviews of ongoing medical interventions in skilled nursing and intermediate care facilities. These reviews ensure that residents' treatments are regularly reassessed for appropriateness and effectiveness, safeguarding their health and well-being.

The purpose of each provision, the issue it addresses, and the rationale for its necessity are as follows:

- **Subsection (1)** sets a clear timeline for initiating quarterly reviews and defines the conditions that trigger them. This ensures timely reassessment of medical interventions when ordered by the attending physician, in response to significant changes in the residents' condition, or at the request of involved parties.
- **Subsection (2)** mandates regular evaluation of psychotropic medications and the use of physical and chemical restraints. Given their significant impact on residents' health, these interventions require careful oversight to prevent misuse or overuse.
- **Subsection (3)** exempts low-risk, one-time procedures from quarterly reviews while ensuring proper documentation and reassessment if necessary. This

prevents unnecessary reviews, allowing resources to be directed toward more critical, ongoing interventions.

- **Subsection (4)** establishes a transparent process for documenting and sharing quarterly review outcomes. This ensures that all relevant parties have access to essential information, supporting informed decision-making and continuity of care.

Documents Relied Upon

1. California Master Plan for Aging Investments – Office of the Long-Term Care Patient Representative FY 2021-22 General Fund.
2. *California Advocates for Nursing Home Reform v. Smith* (2019) 38 Cal. App. 5th 838.
3. *California Advocates for Nursing Home Reform v. Sonia Angel* (2022) Alameda County Superior Court Case No. RG13700100.

ECONOMIC IMPACT ASSESSMENT

The Program has assessed the potential economic impact of the proposed amendment to Health and Safety (HSC) § 1418.8(g) regarding the evaluation of medical interventions in skilled nursing and intermediate care facilities. Based on this analysis, the following determinations have been made:

1. **The creation or elimination of jobs within the State of California:** The proposed regulatory action is not expected to result in the creation or elimination of jobs within the State of California. It is specifically designed to refine the procedures for evaluating medical interventions within skilled nursing and intermediate care facilities. These revisions pertain to administrative and procedural processes rather than operational changes that would necessitate workforce adjustments. Since the regulation does not introduce new staffing requirements, reduce existing roles, or create demand for additional personnel, it is unlikely to have a measurable impact on employment levels in the broader healthcare industry or the state's economy.
2. **The creation of new businesses or the elimination of existing businesses within the State of California:** The amendment will not affect the creation or closure of businesses within the State of California. It specifically addresses the

frequency and process of quarterly reviews for reassessing residents' medical conditions in skilled nursing and intermediate care facilities. These changes are limited to the internal operations of existing healthcare providers and do not introduce new regulatory burdens or economic conditions that would influence the broader business landscape.

- 3. Impact on Business Expansion:** The proposal is not expected to impact the growth of businesses currently operating in the State of California. The regulatory changes focus exclusively on refining the process for conducting quarterly reviews of medical interventions within skilled nursing and intermediate care facilities. These modifications are intended to enhance the quality of patient care and ensure compliance with existing healthcare standards rather than alter the financial, structural, or operational aspects of healthcare businesses. As the proposal does not impose new financial obligations, restrict services, or create market-driven incentives, it is unlikely to influence business expansion within the broader healthcare industry or the state's economy.

- 4. Benefits to Health, Welfare, Worker Safety, and Environment:** The primary benefit of the amendment is improved healthcare quality for residents in skilled nursing and intermediate care facilities. By ensuring that medical intervention evaluations align more effectively with individual health needs, the regulation enhances patient care and safety. However, it does not directly impact worker safety or the environment, as it focuses on internal healthcare procedures.

Reasonable Alternatives Considered

No reasonable alternatives to the proposed regulation would achieve the intended purpose more effectively, nor would any alternative be equally effective while imposing a lesser burden on affected private individuals. The proposed regulation ensures full compliance with the applicable law while maintaining efficiency and effectiveness in its implementation.

Impact on Small Business

The Program acknowledges that small businesses within healthcare settings may need to comply with the proposed regulation. However, the economic impact is expected to be minimal, as the changes are administrative in nature and aim to improve healthcare quality without imposing significant new burdens.