

FINAL STATEMENT OF REASONS - ADDENDUM

ALTERNATIVES CONSIDERED

The California Department of Public Health (the Department) has determined that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

RESPONSE TO COMMENTS

The Department has amended the response to the following comments, which were originally thought to be outside the scope of the rulemaking. Upon further review, it was determined that these comments were within the scope of the rulemaking, and the responses are amended as follows:

2-16. Comment: The scope and severity calculations are devoid of clear and objective criteria or rationale for how they were chosen and compartmentalized. They are vague and open to interpretation. The vetting process for the development and validation of the criteria used to determine the penalties is biased if validation criteria were performed by CDPH department personnel. Neither is there any clarity or specificity on how the percentages were assigned and the resulting penalties will be calculated in a way that implements the full range contemplated by statute.

Commenter(s): 11

Department Response: No change is made to accommodate the recommendation for the reasons the Department stated in Comment 1-7.

2-22. Comment: Inappropriate use of the scope and severity grid and guidelines in the State Operations Manual used for long-term care facilities – a model that has proven hugely defective and ineffective in promoting quality and change – are used to design its model to implement administrative penalties for acute care hospitals. Instituting a severity grid and describing the levels of harm has a stated goal of equalizing and eliminating the subjectivity to a deficiency investigation. However, there continues to be a large disparity between district offices and individual surveyors as to what constitutes a specified deficiency. A level 2 and level 3 deficiency, for example, while not an immediate jeopardy classification, could be defined multiple ways depending on the surveyor's point of view.

Commenter(s): 3, 5, 8, 11, 17, 21, 22, 36, 38, 39, 40, 46, 47

Department Response: No change is made to accommodate the recommendation for the reasons the Department stated in Comment 1-7.

2-32. Comment: The scope and severity calculations are devoid of clear and objective criteria or rationale for how they were chosen and compartmentalized. They are vague and open to interpretation. The vetting process for the development and validation of the criteria used to determine the penalties is biased if validation criteria were performed by CDPH personnel only. Neither is there any clarity or specificity on how the percentages were assigned and the resulting penalties will be calculated in a way that implements the full range contemplated by statute.

Commenter(s): 43

Department Response: No change is made to accommodate the recommendation for the reasons the Department stated in Comment 1-7.

CHANGES TO REGULATION TEXT

The following changes were made to the originally noticed regulation text:

§ 70957(a)(1)(A) language was amended to remove the last sentence, “The appropriateness of the plan of correction shall be approved by the department;” This amendment was necessary to fix clarity issues regarding the “plan of correction.”

§ 70958 language was amended in the last part of the sentence after the reference to 70957, to read “or the maximum penalty specified in Health and Safety Code section 1280.3, whichever is lower.” This amendment was necessary for clarity and consistency with section 70957, and Health and Safety Code 1280.3.

§ 70959(f) language was amended in the last part of the sentence after the reference to (e), to read “or the maximum penalty specified in Health and Safety Code section 1280.3, whichever is lower.” This amendment was necessary for clarity and consistency with Health and Safety Code 1280.3.

The following change was made to regulation text proposed during the 15-Day Notice of Public Availability:

§ 70960(a)(1) and (a)(2) language was amended to remove the phrase “or a significant danger of reducing the provision of needed health care services.” This amendment was necessary for consistency with the regulation text in §70960(c).