

Methodology to Indicate Changes to DPH-11-017 – Temporary Management

The proposed changes for comment that were the subject of the first 15-day public comment period are indicated as follows:

- Deleted text is indicated by double strike-through (~~double strike-through~~).
- Additions to the regulation text are indicated by double underline (double underline).

The proposed changes for comment that are the subject of the second 15-day public comment period are indicated as follows:

- Deleted text is indicated by bold strike-through (**~~strike-through~~**).
- Additions to the regulation text are indicated by bold underline (**underline**).

Regulation text not subject to this 15-day notice of public availability for comment are presented for the reader's convenience and are indicated as follows:

- Added text as initially proposed is indicated by single underline (underline).

Title 22. Social Security

Division 5. Licensing and Certification of Health Facilities, Home Health Agencies, Clinics, and Referral Agencies

Chapter 3.6. Temporary Management of Long-Term Health Care Facilities

Adopt Section 72901 as follows:

Section 72901. Definitions.

(a) Words must have their usual meaning unless the context or a definition clearly indicates a different meaning. Words used in the present tense include the future; words in the singular number include the plural number; words in the plural number include the singular number. Must means mandatory. May means permissive. Should means suggested and recommended.

(b) "Application" means the materials submitted to the Department by a person, corporation, or other entity applying for placement on the Department's list of potential temporary managers as proof of that applicant's qualifications, as defined in this chapter.

(c) "Department" means the California Department of Public Health.

~~(d) "Financial ownership interest" means any ownership interest through the possession of equity in the capital, stock, or profits of the facility, or through the possession of such an interest in other entities that directly or indirectly hold a financial interest in the facility.~~

~~(e)~~ "Immediate family member" means a spouse or registered domestic partner; natural or adoptive parent, grandparent, child, sibling, or grandchild; stepparent, stepchild, stepsibling, or step-grandchild; mother- or father-in-law; brother- or sister-in-law; daughter- or son-in-law; aunt or uncle; or niece or nephew.

~~(f)~~ "Principal" means:

(1) The officers of the applicant or governing board, including, but not limited to, the chairman, president, vice president, secretary, treasurer, general manager, or board member of the entity;

(2) A person in charge of a principal business function of the applicant; or,

(3) Any other person who is authorized to perform similar policy or decision-making

functions for the applicant, or who governs the operation of the applicant.

(ef) "Temporary manager," as defined in Health and Safety Code section 1325.5, means a person, corporation, or other entity, appointed temporarily by the Department as a substitute facility manager or administrator with authority to hire, terminate, or reassign staff, obligate facility funds, alter facility procedures, and manage a facility to correct deficiencies identified in the facility's operation.

Note: Authority cited: Sections 1275, 1325.5, and 1335, Health and Safety Code.

Reference: Section 1325.5, Health and Safety Code.

Adopt Section 72903 as follows:

Section 72903. Qualifications of a Temporary Manager.

~~(a) The Department must maintain a list of persons, corporations, or other entities that qualify for potential appointment as a temporary manager. Placement on the list is determined in the Department's sole discretion, but each applicant must submit an application to the Department demonstrating the following minimum qualifications:~~

(a) Each applicant must submit an application to the Department demonstrating the applicant meets the minimum qualifications to serve as a temporary manager. Applicants must provide evidence showing:

(1) The applicant is qualified to oversee correction of deficiencies in a long-term health care facility based on the applicant's experience and education or based on the experience and education of the employees, agents, or contractors of the applicant.

(2) The applicant must identify a nursing home administrator, licensed by the Department, who will be responsible for the administration and management of the facility. The administrator must have at least two years of experience as a long-term health care facility administrator.

(3) Neither the applicant, nor the applicant's employees, agents, or contractors, have been found guilty of misconduct by the Department or any other licensing board. This includes the denial, suspension, or revocation of a license, certificate, or other approval, or any other final adverse action.

(4) Neither the applicant, nor the applicant's employees, agents, or contractors, have been

identified as a responsible party who either acted or failed to act in an event that was the basis for:

(A) Any class A or AA citation issued by the Department against a long-term health care facility where death or serious physical harm to a patient or resident occurred within the past five years, pursuant to Health and Safety Code section 1424; or

(B) Any federal enforcement findings of isolated, pattern, or widespread immediate jeopardy, as defined pursuant to Title 42 Code of Federal Regulations (CFR) section 488.1, within the past five years; or

(C) A final Medicare or Medicaid termination action taken under federal law, at any time.

(5) An attestation that the ~~The~~ applicant currently employs or contracts with, or has the ability to ~~promptly~~ employ or contract with, all staff necessary and legally required for the operation of a long-term health care facility within 48 hours from the time the temporary manager is appointed;

(6) An attestation that the ~~The~~ applicant currently employs or contracts with, or has the ability to ~~promptly~~ employ or contract with, the legal and accounting professionals necessary for the operation of a long-term health care facility within 48 hours from the time the temporary manager is appointed; and

(7) An attestation that the ~~The~~ applicant has one or more business lines of credit ~~intended~~ for use upon the appointment of temporary manager. The applicant must disclose the available amount of each line of credit for the operation of the assigned long-term health care facility.

(b) Examples of documents to be submitted as evidence with the application include, but are not limited to, a resume with the applicant's background and experience demonstrating the ability to temporarily manage a long-term health care facility, documentation showing the applicant's compliance with State of California and Federal rules and regulations for long-term health care facilities, and any health care related licenses, certifications or diplomas of the applicant, or staff of the applicant.

(~~c~~) In addition to providing proof of the qualifications in subdivision (a) of this section, the applicant must provide to the Department:

(1) The names of all persons with a ~~financial~~ beneficial ownership interest, as defined in

Health and Safety Code section 1253.2(c) and (j), in the applicant and all officers and directors of the applicant, if the applicant is not an individual; and

(2) The applicant's business contact information, including primary telephone number and email address.

(ed) The Department may request additional documentation to support the application if any required documentation was not submitted or was submitted but incomplete.

(de) If the Department places an applicant on the list of potential temporary managers, that applicant may remain on the list for one year from the date of notification that the applicant has been placed on the list. To be renewed for qualification and remain on the list, an applicant must submit an attestation to the Department that the applicant continues to meet the criteria for appointment as a temporary manager. The renewal attestation must be submitted no later than 30 days prior to the expiration of the one-year term. If there are any changes in the information previously reported to the Department, the applicant must submit a new application.

Note: Authority cited: Sections 1275, 1325.5, and 1335, Health and Safety Code.

Reference: Section 1325.5, Health and Safety Code.

Adopt Section 72905 as follows:

Section 72905. Choosing A Temporary Manager.

(a) When the Department determines that appointment of a temporary manager to manage a facility may be required pursuant to Health and Safety Code section 1325.5(c), the Department may send a **written** notice to applicants on the list of potential temporary managers based on a case by case determination of the needs of the facility, the capability of applicants, and the availability of a prospective temporary manager. Interested applicants must respond to the notice with an attestation that the applicant meets all of the qualifications for appointment as a temporary manager at the identified facility, as required by this chapter and by the Health and Safety Code. **The Department will then make the selection from interested applicants based on a case by case determination of the ability to meet the needs of the facility, the capability of interested applicants, the**

availability of a prospective temporary manager and that the prospective temporary manager can manage the particular facility type that needs a temporary manager.

The Department will provide notice to the selected applicant in writing.

(b) The selected applicant must provide the following to the Department, upon request, prior to appointment:

(1) The names of all persons who might serve in the facility as part of the services provided by the temporary manager and an attestation that each person meets the applicable licensure or professional requirements of their respective profession;

(2) Written confirmation that neither the applicant nor any principals of the applicant currently serve, nor within the past two years have served, as a member of the staff of the identified facility;

(3) Written confirmation of current availability to accept appointment as a temporary manager at the identified facility;

(4) Written confirmation that the applicant, ~~or~~ principals of the applicant, or any parent company or subsidiary of the applicant have no ~~financial~~ beneficial ownership interest, as defined in Health and Safety Code section 1253.23(c), in the identified facility or its licensee, and that no immediate family member of the applicant or principals of the applicant or any parent company or subsidiaries of the applicant has a ~~financial~~ beneficial ownership interest, as defined in Health and Safety Code section 1253.23(c), in the identified facility or its licensee;

(5) A proposed salary or fee for the temporary manager if appointed pursuant to Health and Safety Code section 1325.5(k); and

(6) The amount of available credit on all business lines of credit.

~~(c) The Department has the discretion to appoint a temporary manager pursuant to Health and Safety Code section 1325.5(c).~~

~~(d) If the applicant selected by the Department to serve as a temporary manager is not acceptable to the licensee, the Department will ~~may~~ consult with the licensee to ~~provide or appoint the licensee with~~ an alternative temporary manager from the Department's list of potential temporary managers. ~~The Department will determine whether appointment of an alternate temporary manager is appropriate, in the Department's sole discretion.~~~~

Note: Authority cited: Sections 1275, 1325.5, and 1335, Health and Safety Code.

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Reference: Section 1325.5, Health and Safety Code.

Adopt Section 72907 as follows:

Section 72907. Licensee's Duties.

(a) Upon appointment of a temporary manager by the Department, the facility's licensee and the facility's administrator must relinquish control of the operations of the facility to the temporary manager. The licensee must do all of the following:

(1) Allow the temporary manager to access all facility financial records and manage all facility financial accounts;

(2) Allow the temporary manager to expend facility funds, including funds in all facility financial accounts, to pay for the operation of the facility and to pay the temporary manager's salary, as allowed by the Department;

(3) Allow the temporary manager and the temporary manager's staff access to all buildings, fixtures, furnishings, equipment, consumable goods, supplies, resident care records, and financial records or other items in the licensee's possession that are necessary for the operation of the facility; and

(4) Relinquish authority to the temporary manager to approve or disapprove personnel and other management decisions.

(b) When a temporary manager assumes payment of facility obligations, the licensee remains legally responsible for all licensing requirements, payments of local, state, and federal taxes, and other operating and maintenance expenses of the facility, and the payment of rent, mortgages, and other liens throughout the term of temporary management.

(c) The licensee must not impede or obstruct a temporary manager appointed by the Department in the fulfillment of the temporary manager's obligations as specified in this chapter and in the Health and Safety Code.

Note: Authority cited: Sections 1275, 1325.5, and 1335, Health and Safety Code.

Reference: Section 1325.5, Health and Safety Code.

Adopt Section 72909 as follows:

Section 72909. Temporary Manager's Authority ~~Powers, Duties~~ and Limitations.

(a) The temporary manager must operate and manage the facility, under the supervision and guidance of the Department, to ensure the health and safety of the residents and the delivery of services to them. The temporary manager ~~will~~ ~~must, at a minimum,~~ have the ~~ability to perform the following duties~~ authority to take actions including, but not limited to:

(1) Hire, terminate, reassign, supervise, and direct staff and make other personnel decisions;

(2) Obligate facility funds;

(3) Alter facility policies and procedures;

(4) Use the building, fixtures, furnishings, and consumable goods necessary to provide care and services to residents;

(5) Correct deficiencies in the operation of the facility; and

(6) Make repairs or improvements to the structure or furnishings of the facility if there is ~~a~~ an immediate danger to the health or safety of residents. Pursuant to Health and Safety Code section 1325.5(e)(2), repairs or improvements that are not intended to address an immediate danger to the health or safety of residents require the Department's prior written approval. ~~For capital investments, the Department's prior written approval is required.~~

(A) To obtain the Department's prior written approval for repairs or improvements not intended to address an immediate danger to the health and safety of residents the temporary manager must submit a written request to the Department at Center for Health Care Quality to the attention of Temporary Manager Improvement Requests, MS 0512, P.O. Box 997377, Sacramento, CA 95899-7377, that includes an estimate of the cost of the proposed repairs or improvements and what funds are available to make the repairs or improvements. The Department will review each written request to make the repairs or improvements on a case by case basis, including the Department timeline to respond, and will provide a written response either approving or denying the request for repairs or improvements.

(b) The temporary manager must not use any facility assets for any purpose other than the operation of the facility.

(c) The temporary manager must not change the cost charged by the facility for goods and services without prior approval from the Department.

(d) The temporary manager must not waste or diminish the value of the facility's assets.

Note: Authority cited: Sections 1275, 1325.5, and 1335, Health and Safety Code.

Reference: Section 1325.5, Health and Safety Code.

Adopt Section 72911 as follows:

Section 72911. Temporary Manager's Financial Documentation for Use of Facility and State Funds.

(a) The temporary manager must provide the Department with the following:

(1) Documentation of the temporary manager's attempts to secure and use funds from the facility;

(2) Receipts and invoices for all expenses paid with facility funds, and with state funds; and

(3) Documentation that each expense is necessary for the operation of the facility.

Note: Authority cited: Sections 1275, 1325.5, and 1335, Health and Safety Code.

Reference: Section 1325.5, Health and Safety Code.

Adopt Section 72913 as follows:

Section 72913. Temporary Manager's Final Accounting.

(a) Within 60 calendar days of the termination of the temporary manager's appointment, the temporary manager must file a written final accounting with the Department and the licensee of the facility using generally ~~approved~~ accepted accounting principles. The final accounting must include an accounting of the following:

(1) All property of which the temporary manager took possession during the temporary manager's term of appointment;

(2) All funds collected on behalf of the facility during the temporary manager's term of appointment;

(3) All expenses incurred by the temporary manager; and

(4) All disbursements or transfers of funds, including those funds used to operate the facility from the Health Facilities Citation Penalty Account pursuant to the Health and Safety Code.

Note: Authority cited: Sections 1275, 1325.5, and 1335, Health and Safety Code.

Reference: Section 1325.5, Health and Safety Code.