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NOTICE OF PROPOSED RULEMAKING
Title 22, California Code of Regulations

Temporary Management (DPH-11-017)
Notice Published March 15, 2024

Notice is hereby given that the California Department of Public Health (Department) is proposing the regulation described below. This notice of proposed rulemaking commences a rulemaking to make the regulations permanent after considering all comments, objections, and recommendations regarding the regulation.

PUBLIC PROCEEDINGS

The Department is conducting a 45-day written public proceeding during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in the Informative Digest/Policy Statement Overview section of this notice.

To request copies of the regulatory proposal in an alternate format, please write or call: Veronica Rollin, Office of Regulations, 1415 L Street Suite 500, Sacramento, CA 95814, at (279) 217-0836, email to veronica.rollin@CDPH.ca.gov or use the California Relay Service by dialing 711.

PUBLIC HEARING

A public hearing has not been scheduled for this rulemaking. However, the Department will conduct a public hearing if a written request for a public hearing is received from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period, pursuant to Government Code Section 11346.8.

Assistive Services:

For individuals with disabilities, the Department will provide assistive services such as conversion of written materials into Braille, large print, audiocassette, and computer disk. For public hearings, assistive services can include sign-language interpretation, real-time captioning, note takers, reading, or writing assistance. -To request these assistive services, please call (916) 558-1710 or (California Relay at 711 or 1-800-735-

2929), email Regulations@cdph.ca.gov or write to the Office of Regulations at the address noted above. Note: The range of assistive services available may be limited if requests are received less than 10 business days prior to public hearing.

WRITTEN COMMENT PERIOD

Written comments pertaining to this proposal, regardless of the method of transmittal, must be received by Office of Regulations on May 4, 2024, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely.

Written comments must be submitted as follows:

1. By email to: regulations@cdph.ca.gov. It is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier “DPH-11-017” in the subject line; to facilitate timely identification and review of the comment;
2. By fax transmission to: (916) 636-6220;
3. By postal service or hand delivered to: California Department of Public Health, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814.

All comments, including email or fax transmissions, should include the regulation package identifier, DPH-11-017 “Temporary Management,” along with your name and your mailing address or email address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

AUTHORITY AND REFERENCE

The Department proposes to adopt the regulation sections identified under the authority provided in sections 1275, 1325.5, and 1335 of the Health and Safety Code. This proposal implements, interprets, or makes specific, section 1325.5 of the Health and Safety Code (HSC).

The Department is authorized to adopt and enforce regulations pursuant to HSC sections 1275 and 131200 as may be necessary for the execution of its duties. Pursuant to HSC section 131051(b), the Department is charged with the licensure and regulation of long-term health care facilities.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Proposal

This regulatory action establishes the qualifications, powers, and duties of a temporary manager appointed by the California Department of Public Health (Department) to manage a long-term health care facility when the facility has serious quality of care and/or financial difficulties, and the current facility ownership does not have the ability to correct the deficiencies. This regulatory action specifies: the process for applying for placement on the list of potential temporary managers; the process by which the Department makes an appointment from the list; the duties of the licensee upon appointment of a temporary manager; and the powers, duties, and financial reporting requirements of the temporary manager.

Background

As part of its regulatory authority, the Department may appoint a temporary manager of a long-term health care facility under either of the following circumstances: when residents are in immediate danger of death or permanent injury due to the facility's failure to comply with state or federal requirements applicable to the operation of the facility; or when, as a result of a change in the status of the license or operation of the facility, the facility is required to comply with HSC section 1336.2, the facility fails to comply with HSC section 1336.2, and the Department determines that the facility is unwilling or unable to meet the requirements of HSC section 1336.2. This authority enables the Department to take quick, effective action to protect the health and safety of residents when the facility itself is not in a position to do so, and to minimize the effects of transfer trauma that often accompany the abrupt transfer of elderly and disabled residents (HSC section 1325.5(a)).

A temporary manager is the person, corporation, or other entity appointed as the substitute facility manager or administrator with authority to hire, terminate, or reassign staff, obligate facility funds, alter facility procedures, and manage the facility to correct the deficiencies identified in the facility's operation (HSC section 1325.5(b)). It is the temporary manager's duty to take all necessary steps and make best efforts to eliminate the immediate danger of death or permanent injury to residents or complete the transfer of residents to alternative placements (HSC section 1325.5(d)). To be successful, a temporary manager must have sufficient experience managing facility operations in compliance with applicable state and federal requirements and mitigating risk to residents.

Appointment of a temporary manager is made pursuant to an agreement between the temporary manager and the Department that outlines the circumstances under which the temporary manager may expend facility funds (HSC section 1325.5(e)(2)). Once all facility funds have been exhausted, the Department may use funds from the Health Facilities Citation Penalties Account to operate the facility and pay the temporary manager's salary or fee (HSC section 1325.5(l)).

HSC section 1325.5 prescribes the general qualifications and duties of a temporary manager but also directs the Department to adopt regulations (HSC section 1325.5(m)). The Department recognizes the need for more specificity with regard to these qualifications as well as a standardized application process for temporary managers. The Department also recognizes the need for increased accountability and

transparency with respect to payments made to temporary managers using state funds from the Health Facilities Citation Penalties Account. With this in mind, the proposed regulations would establish the qualifications for appointment as a temporary manager, the powers and duties of a temporary manager, and the procedures for temporary managers to document and justify expenditures when seeking reimbursement from state funds.

Problem Statement

Regulations for the appointment and application process of a temporary manager do not exist, requiring regulations to avoid confusion among the regulated community and to preserve and protect the health and safety of patients.

Objectives (Goals) of the Regulation

The broad objectives of this proposed regulatory action are to:

- Protect the health and safety of long-term health care facility residents and minimize the effects of transfer trauma.
- Create uniform standards for the appointment of temporary managers.
- Clearly delineate authority between a temporary manager and the facility's licensee.
- Provide improved oversight over disbursements of state funds used to operate facilities during periods in which a temporary manager is in place.

Anticipated Benefits

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

- Ensuring that standards of care are maintained throughout a temporary manager's appointment.
- Reducing the risk of confusion, conflict, or harm to residents during the appointment period, including the risk of transfer trauma.
- Clarifying the criteria applicants must satisfy to qualify to serve as a temporary manager.
- Streamlining the application and selection process for potential temporary managers.
- Ensuring transparency between the Department, applicants, and long-term health care facilities regarding the application and appointment process.
- Increasing the pool of qualified temporary managers.
- Ensuring transparency regarding disbursements of funds from the Health Facilities Citation Penalties Account used to operate facilities once other facility revenues have been exhausted.

Evaluation as to Whether the Proposed Regulations Are Inconsistent or Incompatible with Existing State and Federal Regulations

The Department evaluated whether the regulations are inconsistent or incompatible with existing state regulations. This evaluation included a review of the Department's existing state regulations and those regulations specific to long-term care facilities regulations. An internet search of other state agency regulations was also performed and it was determined that no other state agency regulation addressed the same subject matter and that this proposal is not inconsistent or incompatible with other state

regulations. Therefore, the Department has determined that the regulations is not inconsistent or incompatible with existing state regulations.

FORMS INCORPORATED BY REFERENCE (Identified in the Informative Digest)

None.

MANDATED BY FEDERAL LAW OR REGULATIONS

None.

OTHER STATUTORY REQUIREMENTS

None.

LOCAL MANDATE

The Department has determined that this regulatory action would not impose a mandate on local agencies or school districts, nor are there any costs that require state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

DISCLOSURES REGARDING THE PROPOSED ACTION

FISCAL IMPACT ESTIMATES

Cost to any local agencies or school districts that must be reimbursed pursuant to Section 17561 of Government Code:

The Department has determined that these regulations would not impose a mandate on any local agencies or school districts.

The cost or savings to any state agency

The Department anticipates minor and absorbable costs to the Department stemming from this regulatory proposal. The Department's authority to appoint and oversee a temporary manager comes from HSC section 1325.5. There is no reason to believe that these regulations will increase or decrease the frequency of temporary manager appointments, since the need for a temporary manager appointment arises out of the circumstances at a facility. All enforcement and oversight activity by the Department, including allocation of staff time to review temporary manager applications and responses to requests for information, result in minor and absorbable costs to the Center for Health Care Quality. Any savings are attributable to increases in efficiency resulting from the proposed regulation.

Further, the proposed regulations related to the expense reporting requirements assist auditing if funds from the Health Facilities Citation Penalties Account are used and will not result in any costs or savings of any state agency. HSC section 1325.5 authorizes the Department to use funds from this account to operate a long-term

health care facility under temporary management after all other facility revenues are exhausted.

Other Nondiscretionary Cost or Savings Imposed on Local Agencies:

The Department has determined that these regulations will not impact local government.

Cost or Savings in Federal Funding to the State:

The Department has determined that the regulations will not affect federal funding.

HOUSING COSTS

The Department has determined that the proposed regulations would not have an impact on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The Department has determined that a small or typical business would incur minor administrative costs in reasonable compliance with the proposed action. The proposed regulations require interested temporary manager applicants to submit an application package to the Department and to comply with the Department's procedural requirements, but they do not compel a private person or business to take any additional action. The proposed regulations do not impose any costs on residents of long-term health care facilities and will have no effect on Medi-Cal or Medicare.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA)

The Department has determined that the proposed regulations would not significantly affect the following:

- A. The creation or elimination of jobs within the state.
- B. The creation of new businesses or the elimination of existing businesses within the state.
- C. The expansion of businesses currently doing business within the state.
- D. The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment:

The proposed regulations benefit the health and welfare of California residents because they create additional safeguards to protect the residents of long-term health care facilities, who are among the most vulnerable members of the state's population. Establishment of a standing list of potential temporary managers will expedite the appointment process when

the need for a temporary manager arises. By clarifying the qualifications and duties of all temporary managers, these regulations ensure that the quality of resident care does not decline during appointment of a temporary manager.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

BUSINESS REPORTING REQUIREMENTS

None.

EFFECT ON SMALL BUSINESS

The Department has determined that the proposed regulations will have a minimal impact on small businesses. The regulations affect only individuals or business entities who wish to apply to become a temporary manager of a long-term health care facility and do not impose a statewide mandate. Any small business that meets the proposed qualifications for placement on the list of potential temporary managers would likely already be compiling and submitting similar information to the Department as either a nursing home administrator or a facility management company. Applicants for these types of approvals already submit information similar to the materials required by these proposed regulations to the Department. Thus, the Department anticipates that preparation and submission of a temporary manager application will not create significant workload for interested small businesses.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

None.

ALTERNATIVES CONSIDERED

In accordance with Government Code Section 11346.5(a)(13), the Department must determine 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, 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 provision of law.

The Department itself has made an initial determination that there are no acceptable alternatives to the regulations to protect the public interest. However, the Department invites interested persons to present alternatives with respect to the proposed regulation either during the public comment period or at the public hearing (if scheduled).

TECHNICAL, THERETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS RELIED UPON

1. California Advocates for Nursing Home Reform. Letter received September 26, 2019.
2. Temporary Management, Stakeholder Engagement Meeting Comments, August 26, 2019.

CONTACT PERSON

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Sultana Blair of the Center for Health Care Quality, at sultana.blair@cdph.ca.gov.

All other inquiries concerning the action described in this notice may be directed to Veronica Rollin, Office of Regulations, at (279) 217-0836, or to the designated backup contact person, Linda Cortez at (279) 217-0681.

In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DPH-11-017.

AVAILABILITY STATEMENTS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814, will be the custodian of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file).

In order to request that a copy of this public notice, the regulation text, and the initial statement of reasons or alternate formats for these documents be mailed to you, please call (279) 217-0836 (or the California Relay Service at 711), send an email to regulations@cdph.ca.gov, or write to the Office of Regulations at the address previously noted. Upon specific request, these documents will be made available in Braille, large print, audiocassette, or computer disk.

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

Final Statement of Reasons

A copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

INTERNET ACCESS

Materials regarding the action described in this notice (including this public notice, the text of the proposed regulations, and the initial statement of reasons) that are available via the Internet may be accessed at www.cdph.ca.gov by clicking on these links, in the

following order: Decisions Pending & Opportunities for Public Participation, Proposed Regulations.