

Title 22. Social Security

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

Amend Sections 73103, 73449, 74023, 74653, 74713, 76149, 78097, and 78339

INITIAL STATEMENT OF REASONS

SUMMARY OF THE PROPOSAL

This regulatory action would revert the definition of a social worker applicable to five types of licensed entities, including intermediate care facilities and home health agencies, to the definition that existed in regulation prior to 2013. This action is necessary to address an unintended consequence of a 2013 regulatory action by the Department to update title 22 to be consistent with current professional titles used by various oversight and licensing boards under the Department of Consumer Affairs that resulted in the exclusion of qualified unlicensed social workers from these entities.

PROBLEM STATEMENT

The California Department of Public Health (Department) is authorized to adopt, amend, and enforce regulations pursuant to Health and Safety Code sections 1275, 1580, 1734, and 131200¹ as is necessary for the execution of its duties. Pursuant to section 131051, subdivision (b), the Department is also charged with the licensing of health facilities and other entities, including intermediate care facilities (ICF), intermediate care facilities for the developmentally disabled (ICF-DD), home health agencies (HHA), adult day health centers (ADHC), and referral agencies. Among other standards, the Department prescribes qualifications for the personnel in these licensed entities and prescribes the services to be provided, based on the type of entity and the needs of the persons served. (Health & Saf. Code, §§ 1276, subd. (a), 1276.1, 1580, & 1734.)

Regulations under California Code of Regulations, title 22, define the qualifications to work as a social worker in health facilities and other entities licensed by the Department. The regulations define who may work as a social worker for each type of licensee based on the nature of the licensee and the unique needs of its patients. Prior to 2013, regulations defined “social worker” for five license categories, ICFs, ICF-DDs, HHAs, ADHCs, and referral agencies, to include qualified unlicensed social workers.

In 2013, the Department amended the definition of “social worker” for these five types of licensed entities pursuant to California Code of Regulations, title 1, section 100, subdivision (a)(6) (changes without regulatory effect). The amendments were part of comprehensive revisions to title 22 to update the names of the boards, departments, and associations that license, register, and accredit health care professions, and to update the titles of these professions where necessary. The amendments deleted from the definition of “social worker” the phrase permitting a graduate of a school of social

¹ All further statutory references are to the Health and Safety Code unless otherwise indicated.

work accredited or approved by the Board of Behavioral Sciences with one year of social work experience in a health care setting to work as a social worker. This phrase had enabled many individuals not licensed as a clinical social worker (LCSW), but otherwise trained in the provision of social work services, to work in ICFs, ICF-DDs, HHAs, ADHCs, and referral agencies.

The 2013 amendments were made under the belief that a Master of Social Work (MSW) degree plus one year of experience could no longer substitute for licensure as a social worker. In its Justification for Change, the Department interpreted California Business and Professions Code section 4996 et seq. as mandating that all persons performing services as social workers in a Department-licensed entity be licensed by the Board of Behavioral Sciences. Business and Professions Code section 4996 et seq. specifies the requirements an individual must meet to be licensed as a clinical social worker and prohibits any person from engaging in the practice of clinical social work “unless at the time of doing so such person holds a valid, unexpired, and unrevoked license under this article.” (Bus. & Prof. Code, § 4996, subd. (b).) The Department concluded that in light of Business and Professions Code section 4996 et seq., an unlicensed person could no longer work as a social worker in the aforementioned licensed entities. The definitions were amended on the ground that the qualifications specified in the regulations no longer applied and were not within the Department’s authority to implement.

The new, limited definition turned out to be problematic, and soon after the amendments became effective, stakeholders contacted the Department with concerns. Historically, ICFs, ICF-DDs, HHAs, ADHCs, and referral agencies had relied upon and employed qualified unlicensed social workers to meet non-clinical social work needs. As a result of the 2013 amendments, qualified unlicensed social workers would be prohibited from working in four types of licensed entities in which they had previously played an important role.²

The Department reexamined the nature of the social work services provided in these types of licensed entities and realized that the amended definition was overly restrictive and unnecessarily required these licensees to employ LCSWs to perform non-clinical social work services, placing a burden on both the affected entities and the unlicensed social worker community. A significant amount of the social work services provided in these licensed entities are not “clinical” and may be performed by a qualified unlicensed social worker. Clinical social work services are services performed for the diagnosis and treatment of mental illnesses. (42 U.S.C. § 1395x(hh)(2); 42 C.F.R. § 410.73(b)(1).) Examples of non-clinical social work services include: intake and initial screening of patients; making arrangements for obtaining needed adaptive equipment, clothing, and personal items; determining program eligibility and obtaining services from outside

² Because Health and Safety Code section 1570.7, subdivision (p), already includes a person with a Master of Social Work degree in the definition of “social worker” for ADHCs, amendment of the “social worker” definition in the ADHC regulations had no legal effect.

entities (e.g., talking books, absentee ballots, community wheelchair transportations); and referring individuals and their families for other needed social services.

While unlicensed social workers may not provide psychotherapy, they may provide counseling that is unrelated to a diagnosable mental condition. Counseling provided by unlicensed social workers must be limited in scope and is generally provided to educate the client and to help him or her examine options and make decisions. While unlicensed social workers may have contact with people who have serious illnesses, this contact alone does not make them treatment providers. Provided unlicensed social workers do not provide social services for which a license is required under Business and Professions Code section 4996, it is not necessary to restrict the aforementioned licensed entities from employing them, and both the affected licensees and social workers have made clear this restriction was detrimental.

The Department realized that the new definition would narrow the pool of social workers from which the licensed entities could hire, impose a financial burden on these entities because LCSWs command higher wages and are scarcer than unlicensed social workers, and needlessly put qualified unlicensed social workers out of work. Moreover, requiring all social work to be done by LCSWs would not improve the delivery of services, and in some instances, would delay delivery of services as LCSWs educated themselves on community resources and the processes patients must follow to gain access to those resources.

Keeping in mind its overarching duty to protect patient health and safety, the Department immediately began working with stakeholders and affected licensees to ensure that existing staff would not be negatively impacted and that provision of social work services would be consistent with the original legislative intent. As a result of its efforts, the Department is not aware of any social work staff whose positions were negatively impacted by the 2013 amendments or patients whose quality of care was adversely impacted.

The Department believes that the 2013 amendments unnecessarily limited the definition of “social worker” as applicable to the affected licensed entities. The Department’s original interpretation of Business and Professions Code section 4996 et seq. was incorrect because it ignored the Department’s authority under the Health and Safety Code to create personnel classifications within Department-licensed entities separate from requirements in the Business and Professions Code. As indicated above, the Health and Safety Code authorizes the Department to establish standards for personnel in ICFs, ICF-DDs, HHAs, ADHCs, and referral agencies. (Health & Saf. Code, §§ 1276, subd. (a), 1276.1, 1580, & 1734.)

With this in mind, this proposed regulatory action amends the definition of “social worker” for ICFs, referral agencies, ICF-DDs, and HHAs to include not only a person licensed as an LCSW by the Board of Behavioral Sciences, but also a person who has a MSW degree from an accredited school of social work plus one year of social work experience in a health care setting. The definition of “social worker” for ADHCs is

amended to mirror the statutory definition found in section 1570.7, subdivision (p), added by AB 572. (Chapter 648, Statutes of 2008.)

In addition to defining personnel qualifications, the Department also dictates whether a licensed entity must have a social work service unit and the services that unit must provide. The social work services provisions for ICFs, HHAs, and ADHCs do not distinguish between services that may be performed by a qualified unlicensed social worker and those that must be performed by an LCSW. The social work services requirements for these licensed entity types do not necessarily require the skills of an LCSW. Rather, it is the responsibility of the licensed entity to identify the clinical social work service needs of the patient and ensure that those needs are met by the appropriate disciplines, such as an LCSW or a physician. If a patient is identified as requiring clinical social work services, the social work service unit is responsible for alerting an LCSW or the physician responsible for signing the plan of care and providing medical orders for the patient. Because the proposed amendments permit both LCSWs and MSWs to provide social work services in the same licensed entity, amending the definition of “social worker” for these licensed entity types requires clarifying that an unlicensed social worker shall only provide those social work services for which no license is required under Business and Professions Code section 4996.

STATEMENT OF BENEFITS

The Department’s proposed amendments will benefit both unlicensed social workers with an MSW degree and the affected licensed entities by eliminating the confusion caused by the 2013 amendments. The proposed amendments reinstate the prior status quo in ICFs, ICF-DDs, HHAs, and referral agencies, enabling qualified unlicensed social workers to work in the licensed entities from which they were excluded in the 2013 amendments. This segment of the social worker work force will have full access to the jobs for which they are qualified.

The proposed amendments align the definition of “social worker” with the definitions used in federal regulations, where applicable. For ADHCs, the amendments align the definitions in the California Code of Regulations with the definitions in the Health and Safety Code, providing clarity and consistency for these facilities.

AUTHORITY AND REFERENCE

This rulemaking action implements, interprets, and makes specific the California statutes associated with state licensing of health facilities and prescribing standards for the personnel in these licensed entities and the services provided therein, based on the type of licensed entity and the needs of the persons served thereby. The statutory authorities cited for this regulatory proposal are found in Health and Safety Code sections 1275, 1734, 1580, 100275, and 131200. The references cited in this regulatory proposal are sections 1276, 1276.1, 1316.5, 1570.7, 1727, 1734, 1570.1, 131050, 131051, and 131052.

SPECIFIC RATIONALE FOR EACH SECTION

DEFINITIONS

Section 73103: amends the definition of “social worker” for ICFs to include a person who has a MSW degree from an accredited school of social work plus one year of social work experience in a health care setting. Amending this definition is reasonably necessary to permit qualified unlicensed social workers to work in this type of health facility. Tasks performed by the social work service unit of an ICF include conducting patient interviews, preparing monthly progress reports, and participating in the non-clinical aspects of discharge planning. (Cal. Code Regs., tit. 22, § 73449.) These tasks are non-clinical; permitting qualified unlicensed social workers with a MSW degree plus one year of experience in a health care setting to provide non-clinical social work services in ICFs does not violate Business and Professions Code section 4996 et seq. and does not exceed the scope of practice of an unlicensed social worker. Historically, unlicensed social workers have filled the social worker positions in ICFs; there is no reason to restrict these positions to LCSWs.

In the Reference section, the Department proposes to add section 1276.1. This is a change without regulatory effect pursuant to California Code of Regulations, title 1, section 100, subdivision (a)(5). This change does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision because it is merely a change to the Reference section to add the citation that provides that in setting personnel standards pursuant to section 1276, the Department may set such standards itself.

Section 74023: amends the definition of “social worker” for referral agencies to include a person who has a MSW degree from an accredited school of social work plus one year of social work experience in a health care setting. Amending this definition is reasonably necessary to permit qualified unlicensed social workers to work in referral agencies. The counseling services provided by referral agencies include assisting the patient and family in utilizing available community resources and in adjusting socially and emotionally to problems accompanying the patient’s admission to a health facility. (Cal. Code Regs., tit. 22, § 74307.) Because these services are non-clinical, permitting qualified unlicensed social workers with a MSW degree plus one year of experience in a health care setting to provide non-clinical social work services in referral agencies does not violate Business and Professions Code section 4996 et seq. and does not exceed the scope of practice of an unlicensed social worker. Historically, unlicensed social workers have filled the social worker positions in referral agencies; there is no reason to restrict these positions to LCSWs.

In the Authority section, the Department proposes to remove section 1275. This is a change without regulatory effect pursuant to California Code of Regulations, title 1, section 100, subdivision (a)(5). Section 1275 empowers the Department to adopt, amend, or repeal regulations pursuant to the Department’s powers and duties under chapter 2 of division 2 of the Health and Safety Code. Chapter 2 covers only “health facilities,” as defined in that chapter, and referral agencies are not included in that definition. Because the Department’s authority to license and oversee referral agencies

is found in chapter 2.3 of division 2 of the Health and Safety Code, section 1275 is not proper authority. This change does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provisions because it is merely a change to the Authority section to remove an inaccurate citation.

In the Reference section, the Department proposes to remove section 1276. This is a change without regulatory effect pursuant to California Code of Regulations, title 1, section 100, subdivision (a)(5). Section 1276 also applies only to “health facilities,” as defined in chapter 2 of division 2 of the Health and Safety Code. For the reasons stated above, section 1276 is not a proper reference citation.

Section 74653: amends the definition of “social worker” for HHAs to include a person who has a MSW degree from an accredited school of social work plus one year of social work experience in a health care setting. Amending this definition is reasonably necessary to permit qualified unlicensed social workers to work in HHAs. The social workers in HHAs utilize appropriate community resources, participate in developing a plan of treatment, and observe, record, and report information on the patient’s condition to the attending physician. (Cal. Code Regs., tit. 22, § 74713, subd. (c).) For the reasons stated above, permitting qualified unlicensed social workers with a MSW degree plus one year of experience in a health care setting to provide non-clinical social work services in HHAs does not violate Business and Professions Code section 4996 et seq. and does not exceed the scope of practice of an unlicensed social worker.

Further, by requiring licensure, the existing definition of “social worker” in California Code of Regulations, title 22, section 74653 exceeds the federal qualifications contained in the Centers for Medicare and Medicaid Services’ (CMS) Conditions of Participation governing HHAs. Prior to the 2013 amendments, California’s definition of social worker mirrored the definition found in the Conditions of Participation: “A person who has a master’s degree from a school of social work accredited by the Council on Social Work Education and has 1 year of social work experience in a health care setting.” (42 C.F.R. § 484.4.) Historically, unlicensed social workers have filled the social worker positions in HHAs; there is no reason to restrict these positions to LCSWs.

In the Authority section, the Department proposes to remove section 1275 for the reasons stated above. This is a change without regulatory effect pursuant to California Code of Regulations, title 1, section 100, subdivision (a)(5). Home health agencies are not included in the definition of “health facility” in chapter 2, division 2 of the Health and Safety Code. Because the Department’s authority to license and oversee HHAs is found in chapter 8 of division 2 of the Health and Safety Code, the Department proposes to add section 1734, which empowers the Department to adopt, amend, and repeal regulations related to HHAs. This change does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision because it merely replaces an inaccurate citation.

In the Reference section, the Department proposes to remove section 1276. This is a change without regulatory effect pursuant to California Code of Regulations, title 1, section 100, subdivision (a)(5). Section 1276 also applies only to “health facilities,” as defined in chapter 2 of division 2 of the Health and Safety Code. For the reasons stated above, section 1276 is not a proper reference citation.

Section 76149, subdivision (a): amends the definition of “social worker” for ICF-DDs to include a person who has a MSW degree from an accredited school of social work plus one year of social work experience in a health care setting. Amending this definition is reasonably necessary to permit qualified unlicensed social workers to work in this type of health facility. As part of the ICF-DD’s multidisciplinary professional staff, social workers work with physicians, nurses, and professionals from other disciplines to facilitate a patient’s growth and ability to cope with social, emotional, psychological, and physical disabilities, to establish independence, and to attain optimum potential. Because these services are largely non-clinical, permitting qualified unlicensed social workers with a MSW degree plus one year of experience in a health care setting to provide non-clinical social work services in ICF-DDs does not violate Business and Professions Code section 4996 et seq. and does not exceed the scope of practice of an unlicensed social worker.

Further, by requiring licensure, the existing definition of “social worker” in California Code of Regulations, title 22, section 76149 exceeds the federal qualifications contained in the CMS Conditions of Participation governing ICFs for Individuals with Intellectual Disabilities. The federal rules require only that a social worker hold either a bachelor’s degree or a graduate degree from an accredited school of social work. (42 C.F.R. § 484.430(b)(5)(vi).) There are no licensure or experience requirements.

In the Reference section, the Department proposes to add section 1276.1. This is a change without regulatory effect pursuant to California Code of Regulations, title 1, section 100, subdivision (a)(5). This change does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision because it is merely a change to the Reference section to add the citation that provides that in setting personnel standards pursuant to section 1276, the Department may set such standards itself.

Section 78097: amends the definition of “social worker” for ADHCs to mirror the definition of “social worker” in section 1570.7, subdivision (p). Section 1570.7, subdivision (p) provides that a social worker in an ADHC may be a person who: holds a MSW from an accredited school of social work; holds a master’s degree in psychology, gerontology, or counseling from an accredited school plus one year of experience providing social services in aging, health, or long-term care services; is licensed by the California Board of Behavioral Sciences; or holds a bachelor’s degree in social work from an accredited school plus two years of experience providing social services in aging, health, or long-term care services.

Amending California Code of Regulations, title 22, section 78097 is reasonably necessary to align the Department's regulations with the Health and Safety Code. Repeating the definition of "social worker" found in section 1570.7 does not violate the nonduplication standard of the Administrative Procedure Act because it is reasonably necessary for clarity in title 22. The title 22 regulations governing ADHCs define the qualifications for all personnel that may work in an ADHC. Including "social worker" in the regulations promotes clarity by keeping all ADHC personnel qualifications in one place. This is a change without regulatory effect pursuant to California Code of Regulations, title 1, section 100, subdivision (a)(6). This change does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision because the Department has no discretion to adopt a definition that differs in substance from the statutory definition in section 1570.7, subdivision (p).

In the Authority section, the Department proposes to remove section 1275 for the reasons stated above. This is a change without regulatory effect pursuant to California Code of Regulations, title 1, section 100, subdivision (a)(5). Adult Day Health Centers are not included in the definition of "health facility" in chapter 2, division 2 of the Health and Safety Code. Because the Department's authority to license and oversee ADHCs is found in chapter 3.3 of division 2 of the Health and Safety Code, the Department proposes to add section 1580, which empowers the Department to adopt, amend, and repeal regulations related to ADHCs. This change does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision because it merely replaces an inaccurate citation.

In the Reference section, the Department proposes to remove section 1276 and add section 1570.7. This is a change without regulatory effect pursuant to California Code of Regulations, title 1, section 100, subdivision (a)(5). This change does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision because it is merely a change to the Reference section to remove an inaccurate citation add the citation that provides the statutory definition of "social worker."

SERVICES

Section 73449, subdivision (a): amended grammatically, resulting in no regulatory effect.

Section 73449, subdivision (b): amends the requirements of the social work service unit for ICFs to provide that social workers shall only provide social work services within their respective scopes of practice. Though all of the requirements listed in this section could be met by either a qualified MSW or an LCSW, a patient in an ICF may require additional social work services that rise to the level of clinical. In conjunction with amending the qualifications for social workers in ICFs, this provision is reasonably necessary to ensure that when a patient needs clinical social work services, the services will be provided by an LCSW or other qualified medical professional.

Sections 73449, subdivisions (c)(1) and (2): reorders the social work service unit requirements to follow the chronological order of services a patient receives upon admission to an ICF. This is a change without regulatory effect pursuant to California Code of Regulations, title 1, section 100, subdivision (a)(6). This change does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision because it is a non-substantive change to improve clarity and reduce confusion.

Section 74713, subdivision (b): added to provide that social workers in HHAs shall only provide medical social services within their respective scopes of practice. Though all of the duties listed in this section may be performed by either a qualified MSW or an LCSW, a patient in a HHA may require additional social work services that rise to the level of clinical. In conjunction with amending the qualifications for social workers in HHAs, this provision is reasonably necessary to ensure that when a patient needs clinical social work services, the services will be provided by an LCSW or other qualified medical professional.

In the Authority section, the Department proposes to add sections 1734 and 131200 and remove section 208. This is a change without regulatory effect pursuant to California Code of Regulations, title 1, section 100, subdivision (a)(5). This change does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision because it is merely a change to the Authority section to add the citations that provide the Department's authority and to delete the citation that has been repealed.

Section 78339, subdivision (b): added to provide that social workers in ADHCs shall only provide medical social services within their respective scopes of practice. Though all of the requirements listed in this section could be met by either a qualified MSW or an LCSW, a patient in an ADHC may require additional social work services that rise to the level of clinical. In conjunction with amending the qualifications for social workers in ADHCs, this provision is reasonably necessary to ensure that when a participant needs clinical social work services, the services will be provided by an LCSW or other qualified medical professional.

In the Authority section, the Department proposes to add sections 1580 and 131200 and remove section 208. This is a change without regulatory effect pursuant to California Code of Regulations, title 1, section 100, subdivision (a)(5). This change does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision because it is merely a change to the Authority section to add the citations that provide the Department's authority and to delete the citation that has been repealed.

STATEMENTS OF DETERMINATIONS

REASONABLE ALTERNATIVES CONSIDERED

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 this action is proposed, would be as effective as and less burdensome for affected licensed entities than the proposed action, or would be more cost effective to affected licensed entities and equally effective in implementing the statutory policy or other provision of law.

CONSISTENCY AND COMPATIBILITY WITH STATE REGULATIONS DETERMINATION

The Department evaluated whether the proposed regulations are inconsistent or incompatible with existing state regulations. This evaluation included a review of the Department's laws, as well as those statutes and regulations related to social workers. The Department has determined that no other state regulation addresses the same subject matter, and there are no existing state regulations with which the proposed amendments conflict or with which they are incompatible.

LOCAL MANDATE DETERMINATION

The Department has determined that the proposed amendments do not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by part 7 (commencing with section 17500) of division 4 of the Government Code.

ECONOMIC IMPACT ANALYSIS AND BUSINESS DETERMINATION

The Department has made an initial determination that these amendments 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. Jobs will not be created or eliminated within the affected types of licensed entities. The proposed amendments merely restore the prior status quo, permitting the affected licensed entities to employ qualified unlicensed social workers in existing positions. Notably, returning to the original definition of "social worker" to include unlicensed social workers would not diminish the need for LCSWs; licensed entities would still be required to provide a LCSW or a qualified physician for individuals requiring clinical social work services. Existing businesses will not be eliminated or expanded, and new businesses will not be created.

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.

In addition, the proposed regulations would not significantly affect the following:

- a) Creation or elimination of jobs within the State of California: The broader definition increases the number of social workers qualified to work in certain

types of licensed entities but does not affect the number of social worker positions within those facilities.

- b) Creation of new businesses or the elimination of existing businesses within the State of California – The proposed amendments merely restore the prior status quo, permitting the affected licensed entities to employ qualified unlicensed social workers in existing positions. Notably, returning to the original definition of “social worker” to include unlicensed social workers would not diminish the need for LCSWs; licensed entities would still be required to provide a LCSW or a qualified physician for individuals requiring clinical social work services.
- c) Expansion of businesses currently doing business within the State of California – The proposed amendments merely restore the prior status quo, permitting the affected licensed entities to employ qualified unlicensed social workers in existing positions. Notably, returning to the original definition of “social worker” to include unlicensed social workers would not diminish the need for LCSWs; licensed entities would still be required to provide a LCSW or a qualified physician for individuals requiring clinical social work services.
- d) The health and welfare of California residents, worker safety, and the State’s environment.

BENEFITS OF THE PROPOSED ACTION

Including nonmonetary benefits to the protection of public health and safety, worker safety, the environment, the prevention of discrimination, or the promotion of fairness or social equity, and the increase in openness and transparency in business and government amongst other things. Anticipated benefits from this proposed regulatory action are:

- To reduce confusion for regulation users by harmonizing title 22 regulations with the HSC section 1570.7, subdivision (p).
- To reduce confusion for regulation users by clarifying that social work service staff shall only provide services within their respective scopes of practice.
- To update and clarify existing regulations.

The Department’s proposed amendments will benefit both unlicensed social workers with an MSW degree and the affected licensed entities by eliminating the confusion caused by the 2013 amendments. The proposed amendments reinstate the prior status quo in ICFs, ICF-DDs, HHAs, and referral agencies, enabling qualified unlicensed social workers to work in the licensed entities from which they were excluded in the 2013 amendments. This segment of the social worker work force will have full access to the jobs for which they are qualified.

The proposed amendments align the definition of “social worker” with the definitions used in federal regulations, where applicable. For ADHCs, the amendments align the

definitions in the California Code of Regulations with the definitions in the Health and Safety Code, providing clarity and consistency for these facilities.

IMPACT ON SMALL BUSINESS DETERMINATION

The Department has determined that the proposed amendments will have no adverse impact on small businesses. Small licensed entities providing social work services will be able to employ or contract with qualified licensed or unlicensed social work staff to meet the needs of their patients.

HOUSING COSTS DETERMINATION

The Department has determined that the amendments will have no impact on housing costs. The regulations affect only licensed intermediate care facilities, referral agencies, intermediate care facilities for the developmentally disabled, home health agencies, and adult day health centers.

BUSINESS REPORTING REQUIREMENT

None.

FISCAL IMPACT ASSESSMENT

1. Fiscal impact on local government: None. The Department is not aware of any cost impacts that a local government agency would necessarily incur in complying with the proposed action.
2. Fiscal impact on state government: None. The Department is not aware of any cost impacts that state government would necessarily incur in complying with the proposed action.
3. Fiscal impact on federal funding or state programs: None. The Department assumes the proposed regulation will not have an impact on Medi-Cal costs associated with social worker services. Based on information provided by the Department of Health Care Services (DHCS), referral agency services are not paid for by the Medi-Cal program. In ICF and ICF/DDs, social services fees are considered a part of their per diem rate. HHAs, social work services are paid on an hourly rate; however, the level of the practitioner providing services does not affect the rate paid for the service.
4. Fiscal impact on private persons or businesses directly affected: None. The Department's proposed amendments will not have an impact because the Department has been working closely with the affected entities to ensure that existing, qualified staff would not be negatively impacted following the 2013 amendments. The Department is not aware of any social work staff whose positions were negatively impacted by the 2013 amendments.
5. Other nondiscretionary costs or savings imposed on local agencies: There are no known costs or savings imposed on local agencies in connection to this proposed action.