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NOTICE OF PROPOSED RULEMAKING
Title 22. Social Security
DPH-13-013 Revision of Social Worker Definitions
Notice Published: October 11, 2019

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: Charlet Archuleta, Office of Regulations, 1415 L Street Suite 500, Sacramento, CA 95814, at (916) 445-9403, or email charlet.archuleta@cdph.ca.gov, or use the California Relay Service by dialing 711 at no cost.

WRITTEN COMMENT PERIOD

Written comments pertaining to this proposal, regardless of the method of transmittal, must be received by Office of Regulations by **November 25, 2019**, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely.

Written comments may 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-13-013 Revision of Social Worker Definitions" 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 submitted comments should include the regulation package identifier, "**DPH-13-013 Revision of Social Worker Definitions**", with the comment author's name and email or mailing address.

PUBLIC HEARING

A public hearing has not been scheduled for this rulemaking. However, the Department will conduct a hearing if a written request for a public hearing is received from any interested person, or his or her duly 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 the 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 takes, or reading or writing assistance. To request these assistive services, please call (916) 558-1710 (or California Relay at 711 or 1-800-735-2929), send an email to 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 made less than 10 business days prior to a public hearing.

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.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Summary of 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.

Background

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 131200 as necessary for the execution of its duties. Pursuant to Health and Safety Code section 131051, subdivision (b), the Department is also responsible for state 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 the 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 thereby. (Health & Saf. Code, §§ 1276, subd. (a), 1276.1, 1580, & 1734.)

Problem Statement

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. In 2013, comprehensive revisions to title 22 resulted in the deletion of the phrase permitting a graduate of an accredited school of social work with one year of social work experience in a health care setting to work as a social worker in ICFs, ICF-DDs, HHAs, ADHCs, and referral agencies. The amendments were made under the belief that Business and Professions Code section 4996 et seq. requires all social workers in these types of licensed entities to be licensed as a clinical social worker (LCSW); presumably, a Master of Social Work (MSW) degree plus one year of experience in a health care setting could not substitute for licensure as a social worker. However, Business and Professions Code section 4996, subdivision (b), only requires licensure for those engaging in the practice of clinical social work, and many of the social work services provided in ICFs, ICF-DDs, HHAs, ADHCs, and referral agencies are non-clinical in nature. The resulting definition limited social worker positions in these types of licensed entities to LCSWs, a problematic outcome because historically, these entities have relied upon and employed qualified unlicensed social workers to meet their many non-clinical social work needs.

With this in mind, this proposed regulatory action amends the definition of “social worker” for ICFs, ICF-DDs, HHAs, and referral agencies to reflect the qualifications contained in California Code of Regulations, title 22, prior to 2013. The definition of “social worker” for ADHCs is amended to mirror the statutory definition in Health and Safety Code section 1570.7, subdivision (p), added by Assembly Bill (AB) 572. (Chapter 648, Statutes of 2008.)

In addition, the existing regulations 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 a LCSW. Because the proposed amendments would permit both LCSWs and MSWs to provide social work services in these licensed entities, amending the “social worker” definition for these types of licensed entities 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. Nonsubstantive changes are also proposed to update authorities and references, improve clarity, and reduce confusion.

The purpose of this proposal is to adopt or amend California Code of Regulations, title 22, sections 73103, 73449, subdivisions (a), (b), and (c), 74023, 74653, 74713, subdivision (b), 76149, subdivision (a), 78097, and 78339, subdivision (b), as follows:

- The proposed amendment to section 73449, subdivision (a), is a grammatical correction resulting in no regulatory effect.
- The proposed amendments to sections 73103, 74023, 74653, and 76149 revise the definition of “social worker” for ICFs, referral agencies, HHAs, and ICF-DDs, respectively, to include not only a person licensed as a 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 proposed amendments to sections 73449, subdivision (b), 74713, subdivision (b), and 78339, subdivision (b), provide that unlicensed social workers in ICFs, HHAs, and ADHCs shall only provide those social work services for which no license is required under Business and Professions Code section 4996 when performing social work services in these types of licensed entities.
- The proposed amendment to section 73449, subdivision (c), reorders the social work service unit requirements to reflect the chronological order of services received by a patient upon admission to an ICF.
- The proposed amendments to section 78097 harmonize the definition of “social worker” for ADHCs with the statutory definition of “social worker” found in Health and Safety Code section 1570.7, subdivision (p), add Health and Safety Code section 1580 to the Authority section, and add Health and Safety Code section 1570.7 to the Reference section.
- The proposed amendments to sections 73103 and 76149 add Health and Safety Code section 1276.1 to the Reference sections because that section permits the Department to set personnel standards for ICFs and ICF-DDs.
- The proposed amendments to sections 74023, 74653, and 78097 remove Health and Safety Code sections 1275 and 1276 from the Authority and Reference sections, respectively, because those sections grant the Department regulatory authority over health facilities. Referral agencies, HHAs, and ADHCs are not included in the Health and Safety Code definition of health facility.
- The proposed amendments to sections 74653 and 74713 add Health and Safety Code section 1734 to the Authority sections because that section empowers the Department to adopt regulations regarding HHAs. The proposed amendments to section 74713 also remove Health and Safety Code section 208, subdivision (a), from the Authority section because section 208 was repealed in 1995 and replaced with Health and Safety Code section 131200.

The proposed amendments to section 78339 remove Health and Safety Code section 208, subdivision (a), from the Authority section, since section 208 was repealed in 1995, and replace it with Health and Safety Code sections 1580 and 131200.

Objectives (Goals) of the Regulation

The broad objectives and anticipated benefits, including nonmonetary benefits, from this proposed regulatory action are:

- To effectuate the Department's statutory mandate to prescribe appropriate qualifications for personnel in the health facilities and other entities licensed by the Department and to prescribe the services to be provided based on the type of licensed entity and the needs of the persons served.
- To enable 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, referral agencies, ICF-DDs, and HHAs.
To align the definition of "social worker" in title 22 with federal regulations, where applicable.

Anticipated Benefits

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.

EVALUATION AS TO WHETHER THE PROPOSED REGULATION ARE INCONSISTENT OR INCOMPATIBLE WITH EXISTING STATE AND FEDERAL REGULATIONS

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.

FORMS INCORPORATED BY REFERENCE

Not applicable.

MANDATED BY FEDERAL LAW OR REGULATIONS

Not applicable.

OTHER STATUTORY REQUIREMENTS

Not applicable.

LOCAL MANDATE

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.

DISCLOSURES REGARDING THE PROPOSED ACTION

FISCAL IMPACT ESTIMATES

A) Cost to any local agency or school district requiring reimbursement pursuant to Section 17561 of Government Code:

None. The Department is not aware of any cost impacts that a local government agency would necessarily incur in complying with the proposed action.

B) Cost or savings to any state agency:

None. The Department is not aware of any cost impacts that state government would necessarily incur in complying with the proposed action.

C) Other nondiscretionary costs or savings imposed on local agencies:

None. There are no known costs or savings imposed on local agencies in connection to this proposed action.

D) Cost or savings in federal funding to the state:

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.

HOUSING COSTS

The Department has determined that the regulations will 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 these regulations would not have a significant statewide adverse economic impact directly affecting businesses, and individuals, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

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) The 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) The creation of new businesses or the elimination of existing businesses within the State of California.
- c) The expansion of businesses currently doing business within the State of California.

For additional benefit analysis, see “Anticipated Benefits” under the “Informative Digest/Policy Statement Overview.”

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 REQUIREMENT

None.

EFFECT ON SMALL BUSINESS

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.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

This regulation does not mandate the use of specific technologies or equipment.

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.

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

None.

CONTACT PERSON

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Krisheidy Guerrero (916) 327-0643. All other inquiries concerning the action described in this notice may be directed to, Charlet Archuleta, Office of Regulations, at (916) 445-9403, or to the designated backup contact, Michael Boutros, Office of Regulations, at (916) 440-7822.

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, at the address previously noted, will be the location of public records, including reports, documentation, and other material related to the proposed regulations.

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 (916) 445-9403 (or the California Relay Service at 711), or 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.

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 the [Department's Website \(www.cdph.ca.gov\)](http://www.cdph.ca.gov) by clicking on the following links in the following order: Programs, [Office of Regulations](#), [Proposed Regulations](#).