

SUPPLEMENTAL STATEMENT OF REASONS

The California Department of Public Health (the “Department”) has instituted additional changes to these proposed regulations, and they are discussed below. These changes are either initiated by the Department or are in response to comments that were received during the 45-day public comment period that ended on February 13, 2017.

Section 72517

Subparagraph (c)

In response to two public comments, the Department has clarified which facility personnel must complete the required training. The Department struck language that required a “physician and surgeon” to complete the training and replaced this deletion with the more specific “medical director, directly employed by a facility.” This change reflects that facilities do not employ physician and surgeons outside of the role of medical director. Residents rely on outside physicians and surgeons, who are not employed by the facility, to provide medical care. This change adds specificity to this regulation clarifying which personnel must complete the required training.

In response to a public comment, the Department has added the term “actual or perceived” prior to the term “sexual orientation” and added the term “gender identity” in the first sentence. The revision clarifies the training requirement to ensure that the training is comprehensive in scope and reflects the diversity of the LGBT elder population. In addition, the Department made a grammatical change in the first sentence replacing the connector “or” with “and” in recognition of the interplay between the terms “gender identity” and “gender expression.”

Subparagraph (c)(1)(D)

In response to a public comment, the Department has replaced “his or her” with “the person’s” in the definition of transgender. The Department adopted this change to improve the accuracy and inclusiveness of the definition.

Subparagraph (c)(1)(E)

In response to public comment, the Department proposes amending subparagraph (c)(1) to include a definition of “gender identity.” The enabling statute, Health and Safety Code section 1257.5, requires the term “gender identity” to have the same meaning as in Penal Code section 422.56. However, the Penal Code does not define “gender identity.” The previous version of this proposed regulation substituted the definition of “gender expression” as defined in California Penal Code Section 422.56. The Department has separated these concepts and proposes a new definition for “gender identity.” This amendment provides greater specificity about concepts and themes that must be included in the required training.

Subparagraph (c)(2)(A)

In response to a public comment, the Department proposes amending subparagraph (c)(2)(A) to include the concept of “gender identity” along with “sexual orientation,” and “gender expression” as terminology that should be included in the required training. The Department makes this change based

on additional information provided by public comment that clarified that “gender identity” was an essential term that must also be defined and explained to provide staff with the necessary understanding of LGBT elders’ needs and the discrimination they face in the medical environment.

Subparagraph (c)(2)(B)

In response to a public comment, the Department proposes a non-substantive word choice change to replace “ways” with “methods.” In addition, the Department proposes changing the language requiring that staff receive training about vocabulary regarding gender identity and respecting residents’ pronouns in order to provide clarity.

Subparagraph (c)(2)(C)

In response to a public comment, the Department proposes revised language clarifying the professional obligation for staff to provide care to transgender residents in a manner that is sensitive to their needs and is medically appropriate. The revised language provides greater clarity by requiring the training curriculum to describe the unique discrimination faced by transgender persons and emphasize the obligation to provide medical care in a sensitive and responsive manner.

Subparagraph (c)(2)(E)

In response to a public comment, the Department proposes revised language that better defines the obligation staff members have to provide residents with care in a nondiscriminatory manner and the consequences of failing to provide nondiscriminatory care.

Subparagraph (c)(2)(F)(iii)

In response to a public comment, the Department proposes revised language that broadens the content of the training related to marriage and domestic partnership rights of residents. The Department recognizes that the previous language may have been under inclusive and not reflect all rights available to LGBT residents under both California and federal law.

Subparagraph (c)(2)(F)(iv)

In response to a public comment, the Department proposes revised language that would require the training to include information about residents’ rights under the Nursing Home Reform Act. The Department recognizes that the Nursing Home Reform Act provides several specific antidiscrimination protections for residents that should be included as part of the curriculum outlining a resident’ right to be free of discrimination because of their LGBT status.